

IN THE  
Supreme Court of the United States

OCTOBER TERM, A. D. 1910.

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IN THE MATTER OF THE APPLICATION

OF

GEORGE F. HARDING FOR A WRIT OF MANDAMUS DIRECTED TO THE HONORABLE ARTHUR L. SANBORN, DISTRICT JUDGE OF THE WESTERN DISTRICT OF WISCONSIN, HOLDING THE UNITED STATES CIRCUIT COURT IN AND FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION THEREOF, AND DIRECTED ALSO TO THE SAID CIRCUIT COURT.

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Motion for Leave to File Petition for Writ of Mandamus.

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Now comes the petitioner, GEORGE F. HARDING, by William J. Ammen, his attorney, and moves the court for leave to file the petition for writ of mandamus hereto annexed; and further moves that an order and rule be entered and issued directing the HONORABLE ARTHUR L. SANBORN, District Judge of the Western District of Wisconsin, holding the United States Circuit Court in and for the Northern District of Illinois, Eastern Division, and also directing the said Circuit Court, to show cause why a writ of mandamus should not issue against them, and each of them, in accordance with the prayer of said petition, and why your petitioner should not have such relief, and such other and further relief in the premises as may be just and meet.

WILLIAM J. AMMEN,  
*Attorney for Petitioner.*

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## EXHIBITS.

- “A”—This exhibit embraces the entire Certificate of Evidence signed by Judge Sanborn, November 19, 1909, in relation to the proof, and other proceedings, on the hearing of the petition for leave to amend removal petition. A part of the proof on the hearing of said petition for leave to amend was the printed record of 466 pages filed in the United States Supreme Court on petition for certiorari. That record forms Part II of “Exhibit A,” and includes the original indexes thereto. Said Part II is a reprint, page for page and line for line, of the said original printed record. Part I of said “Exhibit A” embraces the remaining portion of said Certificate of Evidence, with an index thereto. All other exhibits referred to in the Petition are annexed to the Petition.
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*To the Honorable Supreme Court of the United States:*

Your petitioner, GEORGE F. HARDING, respectfully shows:

FIRST: For the purposes of reference, and to avoid repetition of material facts to be shown by this petition, and by way of precaution and for greater safety, a true and complete copy of the "Certificate of Evidence," signed by Judge ARTHUR L. SANBORN on November 19, 1909\*, consisting of two parts bound together, and marked "Exhibit A," is presented and submitted with this petition. Only a portion thereof is relevant or material or necessary to be stated in this petition, but your petitioner is advised that the whole should be thus placed before this Honorable court in order to negative any

\* Time for settlement of certificate of evidence was duly extended beyond November 19, 1909, by orders of record in the preceding term of the court.

possible presumption or claim that parts thereof, *which might otherwise be omitted*, contain matters which should be set forth in this petition or which may be regarded or claimed to be material or relevant by respondent to this petition.

SECOND: Said "*Certificate of Evidence*" shown by said "Exhibit A" is entitled in the case of your petitioner, GEORGE F. HARDING, as complainant, *versus* the STANDARD OIL COMPANY ET AL., as defendants, in chancery No. 28865 in the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division thereof, and, as shown pages 1-2 of Part I of said "Exhibit A," begins as follows:

"BE IT REMEMBERED, that on the 23rd day of April, 1909, there came on to be heard before the Honorable ARTHUR L. SANBORN, as Presiding Judge holding said Circuit Court, the motion of the Corn Products Manufacturing Company, one of said defendants, filed herein on April 16, 1909, *asking for leave to amend its petition for removal in the above entitled cause*, the said Corn Products Manufacturing Company appearing herein by Levy Mayer and William J. Calhoun, its solicitors, and said George F. Harding, complainant, by George F. Harding and William J. Ammen, his solicitors, said George F. Harding and William J. Ammen appearing *specially* as solicitors for said complainant, *for the purpose only* of objecting to the hearing or allowance of said motion, as stated in the written appearance of William J. Ammen filed herein on the 16th day of April, 1909.

"The court certifies that the motion to amend the removal petition, which motion was filed herein on April 16, 1909, was first presented to the Honorable K. M. Landis, on April 16, 1909,

who was then holding said Circuit Court, and who on that date entered herein an order upon said motion, which order appears of record herein.

"The court further certifies that all further hearing of said motion to amend said removal petition was on April 23, 1909, transferred by said Hon. K. M. Landis, then holding said Circuit Court, to the undersigned, Arthur L. Sanborn, as a Judge of said court.

"The court further certifies that thereafter on said April 23, 1909, at 2 P. M. in the afternoon of said date, the various solicitors and counsel for said George F. Harding, complainant, and said Corn Products Manufacturing Company being present, and the court having entered upon the hearing of said motion, Mr. Levy Mayer, one of the counsel for said Corn Products Manufacturing Company read said motion and the consents thereto attached to amend said removal petition, and referred to and read parts of the *printed transcript of record filed in the Supreme Court of the United States upon an application for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, in the case of George F. Harding et al. v. The Corn Products Refining Company et al.*, A COPY OF WHICH PRINTED TRANSCRIPT OF RECORD IS AS FOLLOWS:"

Said PRINTED TRANSCRIPT OF RECORD SO FILED IN THE SUPREME COURT OF THE UNITED STATES, which here follows in the said *Certificate of Evidence*, is duplicated, page for page and line for line, as Part II of said "Exhibit A"; and said Certificate of Evidence, as shown in Part I of said "Exhibit A," continues as follows:

"It is further certified that complainant insisted that the whole of said *Transcript* should

be considered as being in evidence and the same was so considered by the court."

#### HARDING SUIT IN STATE COURT.

THIRD: Said suit brought by your petitioner was begun in the Superior Court of Cook County, Illinois, by the filing of a bill in equity therein, on October 19, 1907, by your petitioner, as complainant, claiming relief, as a stockholder of the Corn Products Company, against the parties made defendant thereto, namely: the Standard Oil Company, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, corporations organized and existing under the laws of New Jersey, and Conrad H. Mathiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. C. Herget, Thomas P. Kingsford, William C. Sherwood and Edward T. Bedford. Said bill of complaint is shown on pages 313-351 of Part II of said "Exhibit A." *Said bill described your petitioner as* "A RESIDENT AND CITIZEN OF THE STATE OF CALIFORNIA," and contained no averment as to the residence or citizenship of any of the individuals made defendants thereto. The prayer thereof is shown on pages 349-351 of Part II of said "Exhibit A."

FOURTH: By leave of said Superior Court, your petitioner, on October 25, 1907, filed therein his amended bill of complaint in said cause, as printed on pages 356-397 of Part II of said "Exhibit A." Said amended bill described your petitioner as "a resident and citizen of the State of California," and contained no averment as to the residence or

citizenship of any of the individuals made defendants thereto. The names of the parties defendant, together with the prayer of said amended bill, are shown on pages 394-397 of Part II of said "Exhibit A." W. H. Nichols and E. P. Wemple, though named in the charging portion of said original bill, were inadvertently omitted by your petitioner in the prayer for process, and the prayer for relief contained therein, but this error was corrected in said amended bill, and, with this exception, the parties defendant were the same in both of said bills.

FIFTH: Process of summons was issued in the said suit brought by your petitioner, in due form, against said defendants, returnable on the first Monday of November, 1907, bearing date October 19, 1907. Said summons was duly returned by the Sheriff of said county, with endorsements thereon showing service on said four corporations, and on said defendants, Glass, Morton, Wagner and Calhoun, and showing the other defendants not found. Said summons and said return thereon appear on pages 351-352 of Part II of said "Exhibit A." On October 24, 1907, your petitioner filed in said cause in said Superior Court the affidavit of Abner C. Harding, entitled in said cause, dated and sworn to on October 23, 1907, stating that the said Standard Oil Company, and said defendants, Mathiessen, Sherwood, Heaton, Ream, Kingsford and Bedford, were then non-residents of the State of Illinois, and stating their places of residence, respectively, so far as informed in regard thereto, and further stating that said affiant had not been able to ascertain the resi-



dence of said defendants, Graham and Herget. Said affidavit appears on pages 354-355 of Part II of said "Exhibit A." It further appears, as hereinafter shown, that your petitioner had instituted a proceeding by notices and subpoenas duly served to take testimony of the defendants, Calhoun, Glass, Morton and others, before a notary public, at the office of such notary public, in Chicago, Illinois, beginning on November 4, 1907, at the hour of 11 o'clock A. M., in accordance with the statute of the State of Illinois in and for such case made and provided.

PETITION IN REAL ESTATE COMPANY'S SUIT.

SIXTH: On November 4, 1907, in a certain suit in equity then pending in said Circuit Court of the United States (after removal thereto from State Court), theretofore brought by the CHICAGO REAL ESTATE LOAN & TRUST COMPANY, an Illinois corporation, as complainant, against three of said New Jersey corporations, and others, as defendants, a certain petition or motion in writing was filed by said Corn Products Refining Company, by its solicitors, Moran, Mayer & Meyer, one Levy Mayer being a member of said firm. Said petition of November 4, 1907, was entitled in said suit brought by the said Real Estate Company, and alleged that that suit was brought in the State Court on May 4, 1907, and that on June 8, 1907, by leave of said Circuit Court, a transcript of record in said cause in the State Court was filed in said Circuit Court, and an order thereupon entered therein, staying further proceedings in the State Court, and restraining the complainant therein, and its officers, agents, representatives, counsel, solici-

itors and attorneys from proceeding further with the prosecution of said cause in the State Court; and that on July 8, 1907, the motion of said complainant therein to remand the cause to the State Court was denied by said Circuit Court; and that, notwithstanding the premises, on October 19, 1907, there was filed in the Superior Court of said Cook County a certain bill by your petitioner, as complainant, and thereupon said petition proceeded as follows, as shown on pages 74-75 of Part II of said "Exhibit A," namely:

"Your petitioner, upon information and belief, states that George F. Harding was until recently the president of said Chicago Real Estate Loan & Trust Company, and that for many years last past he owned or controlled, and now owns or controls substantially all of the capital stock and controls all of the directors of said company, and that his son, George F. Harding, Jr., is now the president thereof; and that the board of directors of said company is now composed of either members of his family or of clerks or irresponsible nominees.

"Your petitioner further alleges that said company was originally organized under the name of Peoria Starch Manufacturing Company, under the charter granted by the legislature of the State of Illinois on or about February 11, 1857; that, as its name implies, one of its objects of incorporation was to manufacture starch, and that its charter fixed the minimum of its capital stock at forty thousand dollars (\$40,000), and the maximum at not more than two hundred and fifty thousand dollars (\$250,000); that on or about March 27, 1894, the name of said Peoria Starch Manufacturing Company was changed to that of Chicago Real Estate Loan & Trust Company.

“Your petitioner further alleges, upon information and belief, the following:

“That said company has been used as a cloak and shield for the concealment of the property and effects of said George F. Harding, and that for some years last past he was a defendant to litigation in which his wife, in the State Courts of Illinois, sought to secure maintenance and alimony, which was finally decreed to her, and that in order to evade the payment of such maintenance and alimony, said company was used as a device whereby he might be enabled to either secrete his property or belittle the amount of his effects, and that various phases of said litigation appear in the printed reports of the decisions of the Illinois courts and of the United States Supreme Court, to which reference is hereby made, among them being *Harding v. Harding*, 79 Ill. App., 590; 79 Ill. App., 621; 180 Ill., 481; 180 Ill., 692; 205 Ill., 105; 198 U. S., 317. That said George F. Harding was, as your petitioner is informed and believes, born in the State of Illinois, and that he is now over seventy years of age, and that he has continuously during his life been a resident and citizen thereof until he moved to California, wherein he instituted proceedings for a divorce against his wife, and which proceedings are the same proceedings referred to in *Harding v. Harding*, 198 U. S., 317. That the bill herein is a class bill and alleges that said Chicago Real Estate Loan & Trust Company is the holder and owner of one thousand shares of the capital stock of said Corn Products Company \* \* \*; that said second bill is also a class bill, and alleges that said George F. Harding is the owner and holder of five hundred shares of the stock of said Corn Products Company \* \* \*; and your petitioner alleges upon information and belief that the stock upon which said first bill is based, and also that upon which said second bill is based was

owned, held or controlled on May 4, 1907, when said first bill was filed, and continuously since has been and still is owned, held or controlled by said Chicago Real Estate Loan & Trust Company and said George F. Harding, *or* either of them. YOUR PETITIONER FURTHER SHOWS THAT THE PARTIES DEFENDANT TO BOTH SUITS ARE SUBSTANTIALLY THE SAME, AND THAT THE SUBJECT MATTER THEREOF IS LIKEWISE SO, AND THAT THIS COURT IN SAID CAUSE PENDING HEREIN, HAS FIRST ACQUIRED JURISDICTION, WITH FULL POWER TO HEAR AND DETERMINE ALL CONTROVERSIES RELATING THERETO.

“Wherefore, the premises considered, your petitioner prays that said George F. Harding and said A. B. Joyner, his solicitor, *be enjoined and restrained from the further prosecution of said bill so filed in said Superior Court of Cook County, on October 19, 1907, as amended on October 25, 1907, and from taking any and all further proceedings therein; and that they be required by the order of this court, to dismiss said bill so filed in said Superior Court of Cook County on October 19, 1907, as amended on October 25, 1907.*”

Said petition of November 4, 1907, was sworn to on that date by one Hal C. Bangs, a clerk or employe of said Mayer, said affidavit appended to said petition and filed therewith and sworn to by him being as follows:

“Hal C. Bangs, being first duly sworn, upon oath, deposes and says that *he is the agent in this behalf of said Corn Products Refining Company; that he is familiar with said litigation and has made careful, exhaustive and diligent search into the facts and circumstances detailed in the above and foregoing motion; that all of the facts therein stated, except the facts therein alleged upon information and belief, are true, and as to*

the facts therein alleged to be upon information and belief, he believes the same to be true."

Said petition of Nov. 4, 1907, together with said affidavit thereto, appears on pages 73-6 of Part II of said "Exhibit A."

SEVENTH: Said order of said Circuit Court entered on June 8, 1907, made on motion of said firm of said Mayer, as solicitors for said Corn Products Manufacturing Company, granting leave to file and ordering filed in said Circuit Court a transcript of the record of the State Court in said Real Estate Company's suit, and staying the further prosecution of that suit, and enjoining said Real Estate Company, its officers, etc., "from proceeding further with the prosecution of said case in said State Court," is fully shown on pages 2-3 of Part II of said "Exhibit A," and the said transcript of record so filed is shown on pages 3-38 of Part II of said "Exhibit A."

#### INJUNCTION OF NOVEMBER 4, 1907.

EIGHTH: Without notice to said Real Estate Company, or its solicitor, and without notice to your petitioner, or his solicitor, and without the knowledge of any or either of them, an order was entered by said Circuit Court on November 4, 1907, on said petition or motion of that date, requiring your petitioner and his solicitor, A. B. Joyner, to appear before said Circuit Court on November 12, 1909, and show cause why a temporary injunction should not issue restraining your petitioner and said Joyner and their agents and representatives, and each of

them, from the further prosecution of said suit brought by your petitioner in said Superior Court, and further show cause why your petitioner and said Joyner "should not be directed to dismiss said suit so pending in said Superior Court," and further ordering "that until the hearing and disposition of said motion for an injunction said George F. Harding and said A. B. Joyner, and each of them, and their, and each of their agents and representatives be, and they and each of them hereby are jointly and severally restrained from proceeding further with the prosecution of, or taking any steps of any kind in said case of *George F. Harding v. The Standard Oil Company of New Jersey, Corn Products Refining Company, and others*, numbered 263,565 in the Superior Court of said Cook County; all until the further order of this court." Said order of November 4, 1907, is shown on pages 77-78 of Part II of said "Exhibit A."

NINTH: On November 12, 1907, your petitioner filed in the said Real Estate Company's suit his answer under oath to the said rule of November 4, 1907, together with the answer of said Joyner thereto. Said answer of your petitioner so filed on November 12, 1907, to said rule of November 4, 1907, is shown on pages 83-88 of Part II of said "Exhibit A," and said answer of said Joyner is shown on pages 88-89 thereof. SAID ANSWER OF YOUR PETITIONER TO SAID RULE OF NOVEMBER 4, 1907, stated as follows:

"Now comes George F. Harding, *who is not a party to this case*, SPECIALLY APPEARING *only in obedience to the order of this court entered here-*

*in on November 4, 1907, and shows cause \* \* \**  
*as follows, viz.:*

\* \* \* \* \*

“That \* \* \* your respondent states that it is entirely untrue that said plaintiffs in said State Court and in this court have any common interest of any kind whatever in said stock described in said several bills \* \* \*.

“Your respondent, further answering, says that he does not own and has not at any time for many years last past owned a single share of stock in said Chicago Real Estate Loan & Trust Company, nor has he been a president or officer or director therein, or connected with the management of said Chicago Real Estate Loan & Trust Company at any time for many years last past, and it is utterly false that he ever used the said Chicago Real Estate Loan & Trust Company as a cloak or shield for the concealment of his property or effects, or to defeat his wife or any other person, or to evade the payment of alimony or any other matter, or in any way or to any extent to secrete his property or belittle the amount of his effects, and it is not true that the various phases of said litigation appear in the printed reports of the decision of the Illinois courts and of the United States Supreme Court, and the case referred to in 198 U. S., 317, has no reference whatever, as appears upon its face, to the said subject matter of, or to the recovery of alimony or any other matter material in this case, and your respondent alleges that nothing in said litigation can be found which in any way reflects upon your respondent, and this ancient scandal, immaterial and indifferent in this case, is simply brought in because of the want of meritorious matter and in the endeavor to suppress the real truth and divert the court’s attention from the real facts in this case.

\* \* \* \* \*

“Your respondent further answering says that he had neither knowledge or notice of said motion or petition or of the said order herein obtained on November 4, 1907, until after said order was entered, and alleges that it was obtained without the knowledge of or any notice to respondent, the plaintiff in state bill, or by or to attorney for plaintiff, in either of said cases, and, as he believes without the knowledge of anyone, except said defendant in this case, and the attorneys representing said defendants.

*“Your respondent further states and alleges that this injunction was simply obtained to stop this plaintiff in said case in the Superior Court from attaching the defendants Morton, Glass and Calhoun, for contempt; and in order to protect them from punishment for failing to obey the subpoenas commanding them to testify to the truth concerning the matters involved in said state case.*

“That the said defendants were ordered to testify by said subpoenas, at 11 o'clock on November 4, 1907, and just before the said restraining order was obtained. That they were about to be proceeded against in said court of justice for their misconduct in refusing to testify and in thus evading the authority of the said state court, when this motion was secretly made and said injunction order was obtained forbidding the plaintiff in said case ‘from proceeding further with the prosecution of or taking any steps of any kind in said case of George F. Harding against the Standard Oil Company of New Jersey, and others’; and so your respondent alleges the truth to be that the said petition and motion were made in this court wilfully, wrongfully, and secretly to prevent the state court from punishing the said defendants therein for contempt in refusing to appear and tell the truth, as witnesses in said cause.



“That said Moran, Mayer & Meyer obtained said order and injunction by fraud and concealment of the truth, viz: that no notice had been given, and of the other facts above stated, and that the prior and paramount jurisdiction was in the said state court, and that your respondent was simply proceeding to maintain the justice of the charges in said bill out of the mouth of the defendants themselves, and your respondent submits that this court had no jurisdiction or authority or power whatever over either this respondent, George F. Harding, or his said attorney, A. B. Joyner, or in any manner restrain the prosecution of said state case.

“Your respondent further answering denies any other allegation or fact set up, in said petition or motion, not elsewhere noticed in this answer, and charges that this whole proceeding is simply a fraud upon this court effected by its officers, said attorneys, by this false petition and concealing the fact that the court had no jurisdiction whatever in the premises, *and respondent alleges that it was improper that one who is not a party to the case before this court should be restrained from enforcing his own rights in the state courts.*

“And this defendant further answering says that said restraining order of November 4, 1907, was and is wholly void and of no effect, because of the entire lack of jurisdiction on the part of this Honorable court to enter the same. And this court has no authority or jurisdiction over this respondent in the premises, and no authority or jurisdiction to enjoin this respondent, or his said attorney, A. B. Joyner, from further prosecuting said suit in said state court, and no authority or jurisdiction to order this respondent, or said Joyner, to dismiss said suit, *and by this answer this defendant does not intend to submit himself to the jurisdiction of this court,*

*in the premises, but denies the same. Further this respondent saith not.*

*"GEORGE F. HARDING, Respondent."*

TENTH: On November 12, 1907, Kenesaw Mountain Landis, District Judge, holding said Circuit Court, of his own motion, and in the course of his hearing of said rule to show cause entered on November 4, 1907, entered an order in said Real Estate Company's case, requiring your petitioner, and said Albert B. Joyner, and George F. Harding, Jr., and William J. Ammen, to show cause by 10 A. M., next day, "why they and each of them should not be attached for contempt of this court for violating the temporary stay and restraining order entered herein on June 8, 1907." Said order of November 12, 1907, is shown on page 90 of Part II of said "Exhibit A." No exhibit whatsoever was attached to or filed with said petition of November 4, 1907. The "contempt" of court committed in *alleged* "violation" of said restraining order of June 8, 1907, entered in said Real Estate Company's case, for which said rule to show cause was so entered, was the institution and prosecution of said suit of your petitioner by him and his alleged associates in said Superior Court, as hereinafter fully shown.

INJUNCTION OF DEC. 26 (UNDER DATE OF DEC. 13), 1907.

ELEVENTH: On November 13, 1907, in compliance with said rule of November 12, 1907, your petitioner and said Harding, Jr., and said Ammen and said Joyner, filed in said Real Estate Company's suit their respective sworn answers to said rule, al-

though neither of said respondents was ever a party to that suit; said answer filed by your petitioner on November 13, 1907, is shown on pages 91-96 of Part II of said "Exhibit A," and said answers of said Ammen and said Joyner and said Harding, Jr., are shown on pages 97-110 thereof. On December 26, 1907, under date of December 13, 1907, said District Judge Kenesaw Mountain Landis entered an order in the said Real Estate Company's suit, enjoining the further prosecution of your petitioner's said suit brought in the Superior Court. The proceedings before said District Judge, beginning on November 12, 1907, and ending on December 27, 1907, and resulting in the entry of the said decretal order of December 26, 1907 (then dated back to December 13, 1907, as determined by the Court of Appeals in its opinion shown on pp. 452-62 of Part II of said "Exhibit A"), are shown on pages 168-236 of Part II of said "Exhibit A," and SAID DECRETAL ORDER SO ENTERED, antedated to December 13, 1907, is shown on pages 112-114 thereof, the same being entitled in the said Real Estate Company's suit in said United States Circuit Court, and the same being as follows:

"This day comes on to be heard the motion of the defendant, Corn Products Refining Company, entered of record herein November 4, 1907, for an injunction restraining the prosecution of the suit of *George F. Harding v. Standard Oil Company of New Jersey, Corn Products Refining Company et al.*, filed in the Superior Court of Cook County, Illinois, on or about October 19, 1907, and bearing General Number therein 263,565, and for an order to compel the dismissal of said last described suit; and there also now coming on to be heard the rule entered herein

on November 12, 1907, against George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, to show cause why they and each of them should not be attached for contempt of this court for violating the restraining order entered herein on June 8, 1907; and the court having heard and considered the answers to said rule, filed herein on November 13, 1907, by said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and having considered the petition of said Corn Products Refining Company, filed herein on November 4, 1907, and the exhibits thereto, and all the records and files herein, and all the oral evidence given by and statements of said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner in open court; and the said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner being now present in open court, in person, and being also represented by said George F. Harding and William J. Ammen, as their solicitors; and the court having heard the arguments of Levy Mayer, Esq., solicitor for said petitioner, and of said solicitors for said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and being now fully advised in the premises:

*"The court finds that BY THE INSTITUTION OF SAID SUIT OF George F. Harding v. Standard Oil Company of New Jersey, et al., the said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner have, and each of them has knowingly and wilfully violated the order of this court, entered herein on June 8, 1907, but the court of its own motion hereby discharges the said rule of November 12, 1907, for contempt, without the infliction of any punishment on any of the said respondents to said rule; and*

"THE COURT FURTHER FINDS THAT THE FURTHER PROSECUTION OF SAID SUIT OF *George F. Harding v. Standard Oil Company of New Jersey et al.*, AND THE INSTITUTION BY SAID GEORGE F. HARDING, GEORGE F. HARDING, JR., WILLIAM J. AMMEN AND A. B. JOYNER OF ANY ACTION LIKE OR SIMILAR TO THE PRESENT CAUSE SHOULD BE ENJOINED.

"Wherefore, the premises considered, it is hereby ORDERED, ADJUDGED AND DECREED that said *George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner*, and each of them, and their and each of their agents, attorneys, solicitors and representatives BE, AND THEY HEREBY ARE, JOINTLY AND SEVERALLY RESTRAINED AND ENJOINED UNTIL FURTHER ORDER OF THIS COURT, FROM FURTHER PROSECUTING OR TAKING ANY STEPS OR PROCEEDINGS OF ANY KIND IN SAID CASE OF *George F. Harding v. Standard Oil Company of New Jersey, Corn Products Refining Company, et al.*, which was instituted in the Superior Court of Cook County, Illinois, on October 16, 1907, and was numbered therein 263,565, AND WHICH CASE WAS SUBSEQUENTLY DOCKETED IN AND IS NOW PENDING IN THIS COURT AS CASE NUMBERED 28,865.

"It is hereby further ORDERED, ADJUDGED AND DECREED that said *George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner*, and each of them, and their and each of their agents, attorneys, solicitors and representatives be, and they hereby are, jointly and severally restrained and enjoined, until the further order of this court, from in any manner whatsoever, either directly or indirectly, instituting or prosecuting, or causing or inspiring to be instituted or prosecuted, in any court, forum, place or jurisdiction whatsoever, any other suit, action or proceeding making charges and seeking relief like or similar to the charges contained and the relief sought in the case herein of *Chicago Real*

*Estate Loan & Trust Company against said Corn Products Company et al.*; but said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, jointly or severally, by an appropriate proceeding or petition, and upon a proper showing, may apply to this court for leave to intervene herein or become parties hereto; and,

“It is further hereby ordered that that part of said motion of said defendant, Corn Products Refining Company, seeking an order compelling the dismissal of said suit of *George F. Harding v. Standard Oil Company of New Jersey et al.*, be, and the same hereby is continued and reserved for the future consideration of this court, *and to this order and decree, and every part thereof, the said George F. Harding and A. B. Joyner, George F. Harding, Jr., and William J. Ammen jointly and severally object and except,* DENYING AND OBJECTING TO THE JURISDICTION OF THE COURT, and they, and each of them, are hereby granted thirty days from this date within which to present to this court a certificate of evidence to be signed and filed and made a part of the record herein.

#### COMPANY'S MOTIONS TO DISMISS ITS SUIT.

TWELFTH: Prior to the entry of said order on December 26, 1907, said Real Estate Company filed in its said suit in said Circuit Court its motion to dismiss its said suit, and presented the same to said District Judge, Kenesaw Mountain Landis, holding said Circuit Court, and the same was denied by said court prior to the entry of said last named order. Thereupon said Real Estate Company presented to said court four other motions to dismiss its said suit, in order, in different forms, and without waiving its said motion to dismiss already denied by

the court, as aforesaid, and all of the said motions to dismiss were denied by said court before its entry of said order last named. Said five motions to dismiss bill of complaint, numbered in order, together with the said orders denying same, are shown on pages 115-120 of Part II of said "Exhibit A." As hereafter shown, said Court of Appeals held that said motions to dismiss were seasonably presented, and ordered allowance of one or other of such motions.

PROCEEDINGS IN U. S. COURT OF APPEALS AND U. S.  
SUPREME COURT.

THIRTEENTH: From said order entered on December 26, 1907, under date of December 13, 1907, your petitioner, and said Harding, Jr., and said Ammen, and said Joyner, duly prosecuted an appeal to the United States Circuit Court of Appeals, Seventh Circuit; and, on January 19, 1909, an opinion was filed by said Court of Appeals in said appeal, which opinion is reported in Vol. 168 of Federal Reporter, page 658. And, on the same day, January 19, 1909, an order was entered by the said Court of Appeals (but the same was stayed as hereinafter shown) reversing said order so appealed from, and remanding said cause "to the said Circuit Court *with directions to dismiss the bill of the Real Estate Company in conformity with one or the other motions filed therefor*, AND THAT THE PETITION FOR AN INJUNCTION BE THEREUPON DISMISSED." Said opinion filed by said Court of Appeals on January 19, 1909, is shown on pages 452-462 of Part II of said "Exhibit A," and the said order by the said Court of

Appeals on the same date is shown on pages 462-463 thereof.

FOURTEENTH: Under the rules of said Court of Appeals said Corn Products Refining Company was allowed thirty days after the filing of said opinion within which to file its petition for rehearing in said cause; and on the 16th day of February, 1909, said appellee filed its petition for rehearing therein, and, on February 19, 1909, an order was entered therein by said Court of Appeals denying said petition for rehearing, and further ordering that the mandate therein "be stayed until the further order of this court." And, on March 15, 1909, said Court of Appeals entered an order in said cause further staying said mandate. Said order of February 19, 1909, denying petition for rehearing, and staying mandate is shown on page 463 of Part II of said "Exhibit A," and said order of March 15, 1909, is shown on page 465 thereof, the same being as follows:

"Now this day come the parties by their counsel and the motion that mandate in this cause issue, now comes on to be heard on oral argument by Mr. William J. Ammen, counsel for appellants in support of said motion, and by Mr. Levy Mayer, counsel for appellee in opposition to said motion, and the appellants having agreed to accept one week's notice of the filing of a petition for writ of certiorari in the Supreme Court of the United States; It is now here ordered that the mandate in this cause be stayed until the further order of this court, on condition that the appellee herein file its petition for a writ of certiorari in the Supreme Court of the United States on or before March 29, 1909."



FIFTEENTH: On the 27th day of March, 1909, said Corn Products Refining Company filed in the Supreme Court of the United States its petition for writ of certiorari in said cause, together with its brief in support thereof; and, on the 2nd day of April, 1909, your petitioner filed in said Supreme Court his brief in reply to the said petition for certiorari, and your petitioner thereafter remained in or near the City of Washington awaiting the decision of said Supreme Court on said petition for certiorari, and said petition for certiorari was denied by said Supreme Court on the 12th day of April, 1909.

SIXTEENTH: On the 13th day of April, 1909, the said Corn Products Refining Company, by its said solicitor, Levy Mayer, filed in the said Court of Appeals, in said cause, its motion to modify said judgment of the said Court of Appeals, together with printed brief and argument of said Levy Mayer in support thereof, which said motion was argued and taken under advisement by said Court of Appeals on the 14th day of April, 1909, and the same was denied by the said Court of Appeals on the 21st day of April, 1909. A copy of said motion to modify said judgment, marked "Exhibit B," is hereto annexed.

SEVENTEENTH: On the 23rd day of June, 1909, the said Corn Products Refining Company, by Levy Mayer, as its solicitor, filed in the said cause pending in the said Court of Appeals, its motion to retax the costs therein, and on the same day said Court of Appeals took said motion under advisement and thereafter denied the same.

## ORIGINAL REMOVAL PETITION.

EIGHTEENTH: On the next day after the entry of said injunction order of November 4, 1907, namely, on November 5, 1907, said Levy Mayer, as associate counsel with and in the name of James M. Sheean, a member of the firm of Calhoun, Lyford & Sheean, as solicitor for said Corn Products Manufacturing Company, in said suit brought by your petitioner, served a notice upon said A. B. Joyner, as solicitor therein for your petitioner, stating that on the following day, at 10 A. M., the petition of said Manufacturing Company praying a removal of said cause to said United States Circuit Court would be presented to Judge Ball, one of the Judges of said Superior Court. Said notice so served upon said Joyner, together with the affidavit thereto attached showing such service, is shown on pages 406-407 of Part II of said "Exhibit A."

NINETEENTH: Pursuant to said notice of November 5, 1907, said Levy Mayer appeared before said Judge Ball in said Superior Court at the hour mentioned in said notice, and presented to said Judge, in open court, said petition for removal referred to in said notice, verified by one G. W. Powers, as president of said Corn Products Manufacturing Company, and having attached thereto the written consent of all other defendants to said suit, and their united statement of the truth of said removal petition, except as to said Standard Oil Company, which only consented to such removal, the same having been filed therewith on November 5, 1907, in said cause. *Said removal petition alleged that at the*

*time of the commencement of said suit of your petitioner, "the said complainant, George F. Harding, was and continuously since has been a resident and citizen of the State of California, and a citizen of no other state or country."* Said removal petition further alleged that the said Manufacturing Company, and said Corn Products Company, and said Refining Company, and said Standard Oil Company were at the time of the beginning of said suit and continuously thereafter, severally, corporations organized and existing under the laws of the State of New Jersey, and citizens thereof, having their principal offices in said state; and that the defendants, Mathiessen, Ream, Graham, Wemple and Herget, were not at the time of the filing of said bill of complaint, or thereafter, either directors or officers of any of the said defendant corporations. Said petition further alleged:

"That said suit presents a controversy of a civil nature, in equity, wholly between citizens of different states, and also presents a separable controversy *between complainant AND YOUR PETITIONER*; and that the matter and amount in dispute in said suit exceeds, exclusive of interest and costs, the sum or value of two thousand dollars (\$2,000)."

Said removal petition further stated that bond had been filed as required by law, and prayed that the same be approved and that an order be entered for removal of said cause to the said United States Circuit Court, and that no further proceedings be had therein in the State Court. Neither said petition nor said original or amended bill of complaint

or any other paper or record then or thereafter filed or entered or presented in or to said State Court contained any allegation or showing whatsoever as to the residence or citizenship of your petitioner, except as above shown, or any allegation or showing as to the residence or citizenship of any of the individuals made defendants to said bills, except as stated in said affidavit of Abner C. Harding, as above shown. Said removal petition, so verified, together with said written statements of other defendants attached to and filed with said removal petition in said State Court, is shown on pages 397-403 of Part II of said "Exhibit A," and said removal bond filed in said cause in said State Court, with said removal petition, on November 5, 1907, is shown on pages 404-405 thereof.

**TWENTIETH:** On November 6, 1907, said Standard Oil Company filed in said cause in said Superior Court its plea to the jurisdiction of that court, verified by one John P. Archbold, as shown on pages 407-410 of Part II of said "Exhibit A."

**STATE COURT CONTEMPTUOUSLY IGNORED.**

**TWENTY-FIRST:** Upon the said removal papers being so presented to said Judge Ball by said Levy Mayer, your petitioner stated to said Judge that he, your petitioner, desired to be heard in opposition to such removal; and, thereupon, said Judge announced from the bench that he could not then hear or consider the same, but that the same would be heard and considered by him at the opening of said Superior Court on the morning of November 7, 1907,

to which action and announcement no objection whatsoever was taken or suggested by said Levy Mayer, or by any of the parties or solicitors in said cause. Without notice, however, and without further appearance in said Superior Court, and without further action upon the part of that court, the said Levy Mayer appeared on the same date, November 6, 1907, before said Kenesaw Mountain Landis, District Judge, then holding said United States Circuit Court, and obtained from said Judge the entry of an order granting leave to said Corn Products Manufacturing Company to file therein, and ordering filed therein a transcript of the record of said Superior Court in said cause, and staying further proceedings therein in said State Court, and enjoining your petitioner, his agents, representatives, counsel, solicitors and attorneys from proceeding further with the prosecution of said cause in said State Court, all until the further order of said United States Circuit Court, all of which was wholly without notice to and without knowledge of your petitioner or his solicitor in said cause. Said order is shown on page 411 of Part II of said "Exhibit A."

**TWENTY-SECOND:** The files and records of said Superior Court embraced in said transcript so filed in said United States Circuit Court on Nov. 6, 1907, are fully shown on pages 311-410 of Part II of said "Exhibit A."

## HEARING OF MOTION TO REMAND REFUSED.

TWENTY-THIRD: Your petitioner had no knowledge or notice or information of the entry of said order of November 6, 1907, or of the filing of said transcript of record in said United States Circuit Court on that date, until on or about November 12, 1907; and, prior to December 13, 1907, your petitioner applied to said District Judge Kenesaw Mountain Landis, in chambers, and inquired of said Judge if he would hear a motion of your petitioner to remand your petitioner's said suit to the State Court, and was informed by said Judge that he, said Judge, did not deem it proper to hear such a motion to remand "until the court had disposed of the said motion for an injunction, which the court then had under advisement." By reason thereof, and by reason of said injunction order entered on November 4, 1907, your petitioner did not immediately file and present a formal motion to remand his said suit to said State Court. On December 13, 1907, said Judge Landis orally announced his decision in relation to the matter of the said injunction and to the matter of said alleged contempt. The entire certificate of evidence, signed by said Judge Landis and filed in said Real Estate Company suit, in relation to said proceedings of November and December, 1907, is shown on pages 168-414 of Part II of said "Exhibit A." That portion showing said oral opinion or announcement of December 13, 1907, and the proceedings immediately following the delivery thereof, including said refusal of said court to hear your petitioner's

motion to remand, is shown on pages 213-218 of Part II of said "Exhibit A."

TWENTY-FOURTH: On December 23, 1907, your petitioner filed in the office of the clerk of the said United States Circuit Court, in your petitioner's said suit, his motion in writing to remand said cause to said Superior Court, which motion to remand is shown on pages 237-240 of Part II of said "Exhibit A." SAID MOTION TO REMAND (omitting title) reads as follows:

MOTION TO REMAND, FILED DECEMBER 23, 1907.

"Now this day comes George F. Harding, complainant in the above entitled cause, and *appearing specially for the purposes of this motion only, saving and reserving any and all objections which he has to the manifold imperfections in the mode, manner and method of the removal papers*, AND EXPRESSLY DENYING THAT THIS COURT HAS JURISDICTION OF SAID CAUSE, OR OF SAID COMPLAINANT HEREIN, respectfully moves the court to remand said cause to the Superior Court of Cook County, Illinois, from whence it was removed for the following reasons, namely:

"1. That this cause does not present a controversy of a civil nature wholly between citizens of different states, nor does said suit present a separable controversy *between said complainant and said petitioner therein*, and as improperly alleged in said petition and that *no such controversy exists as therein alleged*.

"2. That said Superior Court of Cook County, Illinois, never was and is not authorized to surrender jurisdiction of said cause and that said Circuit Court of the United States never was and is not authorized or entitled to take jurisdiction of said cause.

"3. Because it is not properly shown by said

petition for removal or by the record, in said cause, in legal language and form as required in such pleading, that the parties to said cause were citizens of different states either at the time of the commencement of said suit or at the time of presenting said petition for removal to said Superior Court, or at the time of the filing of said petition therein.

“4. Because it is not shown by the record herein, or by said petition, of what state or states said defendants, respectively, were residents of at the time of the commencement of said suit and at the time when said petition for removal was presented to said Superior Court, or filed therein.

“5. Because the complainant in said cause was, at the time of the commencement of said suit and at the time of the presenting of said petition for removal therein to said Superior Court, and of the filing of the same therein, a citizen of the State of California, and a citizen of no other state, and at the times aforesaid was not a resident of the aforesaid district; and Charles L. Glass, Joy Morton, William J. Calhoun and H. G. Herget, defendants in said cause, were, respectively, at the times aforesaid, citizens and residents of the said State of Illinois, and the other defendants, respectively, were not, at the times aforesaid, citizens of said State of Illinois, or residents of said district, but were, at said times, citizens of states other than said State of Illinois, and not residents, respectively, of said district.

“6. Because said petition for removal fails to allege, in manner and form as required by law, what is, or was, the alleged separable controversy between said complainant and the said petitioner in said cause, and because the said allegation therein that a separable controversy existed therein between said petitioner and said complainant were and are untrue.



"7. And, because the Standard Oil Company, of New Jersey, one of the defendants in said cause, did not unite and join in said petition for removal and because of other imperfections, errors and insufficiencies in said petition for removal and proceedings thereunder and of other matters shown by the record in said cause.

"8. Because said order of removal is unlawful and should be set aside, in that it improperly and unlawfully enjoins said complainant from prosecuting said suit in said Superior Court of Cook County.

"Wherefore complainant respectfully moves that said cause be remanded to said Superior Court of Cook County, Illinois.

"GEORGE F. HARDING,

*"Complainant in said cause."*

GEORGE F. HARDING,  
*Of Counsel.*

TWENTY-FIFTH: On December 25, 1907, there was served upon the solicitors for defendants in said cause a notice signed by your petitioner stating that on December 26, 1907, at 10 A. M., your petitioner (appearing specially for such purpose, only), would present to the said United States Circuit Court his said motion to remand said cause to said State Court and move that said motion be granted by the court. Said notice is shown on page 237 of Part II of said "Exhibit A."

#### HEARING OF MOTION TO REMAND AGAIN REFUSED.

TWENTY-SIXTH: Your petitioner here quotes from the said proceedings in said Circuit Court in December, 1907, as shown on pages 216-237 of Part II of said "Exhibit A," *for the purpose of showing the*

FURTHER efforts of your petitioner to have said motion to remand heard.

(1) Immediately following said oral announcement or opinion of said Judge Landis, on December 13, 1907, the following occurred, as shown on pages 216-218:

"Mr. Mayer: In a similar case before Judge Kohlsaas there was a prayer of dismissal.

"The Court: I have disposed of this matter. This extends now to that as a disposal and some order should be entered here.

"Mr. Ammen: The second suit had been renewed [removed] after this motion was made.

"The Court: The order of dismissal in the second suit?

"Mr. Mayer: It is covered by the order.

"The Court: I have intimated that this settles the case for the time being as to both suits; the order stands as to the second suit under like circumstances; I want to consider the question a little bit further before I enter the order. That may be taken up upon motion.

"Mr. Ammen: The order which is to be entered now will be in the first suit.

"Mr. Mayer: The order we will offer will be an order in the first suit perpetually enjoining the second suit.

"The Court: I think it ought to be in the first suit.

"Mr. Ammen: Will a copy of it be sent me?

"The Court: Yes, of course.

"Mr. Harding: If your Honor please, the motion to remand, I desire to call your Honor's attention to the fact that we wish to argue and present this question at your earliest convenience.

"The Court: This disposes of that question.

"Mr. Harding: Without argument? I mean the question of remanding.

"The Court: I shall, of course, dispose of the question on which the court heard arguments at the last hearing till something is done under the order restraining the further prosecution of the suit, disposes of the motion to remand. In other words, the motion to remand is not in order now in view of what the court has done in this litigation.

"Mr. Harding: We will study on that. In the meantime, we want to make a motion to remand and ask your Honor to hear it.

"The Court: We will come to that *after this order has been entered*, unless it is modified, it will not permit the consideration of the motion which counsel now indicates.

"Mr. Ammen: It is an endeavor to preserve the rights of the parties in the other case.

"The Court: The order can be drawn. And you can communicate with your adversaries in regard to it.

"Mr. Ammen: When will this be done?

"Mr. Mayer: I am going to New York this afternoon and will be there through next week, will be away seven or eight days.

"Mr. Harding: If your Honor please, we think this is an attempt on the part of the defendants to prevent this case being heard. We are, therefore, against all forms of further delay. We are going to seek a trial of this case as soon as possible; there is a great deal of money involved.

"The Court: What will seven or eight days amount to in an important matter in connection with a litigation of this kind? *This order for injunction will be presented by counsel a week from next Monday*, and counsel for the complainant and defendant will then be present at half past two.

"Mr. Mayer: Without any notice?

"The Court: Without any notice.

"Mr. Harding: Now, will that prevent us from going ahead with our motions?"

"The Court: When the order is entered, you understand, there will be plenty of time to proceed with your motion, so long as this order stands.

"Mr. Ammen: We would like first to see the order, to have a copy of it before we come in here.

"The Court: Oh, certainly; it will be furnished you a week from Monday by your adversaries. You can come in the afternoon.

"The court further certifies, at the request of George F. Harding, Sr., and William J. Ammen, that after it had entered [announced] in said first suit the said order [opinion] of injunction on December 13, 1907, the said George F. Harding, Sr., brought to the attention of this court said contemplated motion to remand in language as follows:

" 'Mr. Harding: If your Honor please, the motion to remand, I desire to call your Honor's attention to the fact that we wish to argue and present this question at your earliest convenience.'

"Upon which the court ruled that the motion to remand was not then in order in view of what this court had done in this litigation, viz.: the entering of said injunction. To which said Harding replied:

" 'We will study on that. In the meantime we want to make a motion to remand and ask your Honor to hear it.'

"Adjourned to 2:30 P. M. Monday, December 23, 1907.

"And afterwards, namely, on December 23, 1907, at the hour of 2 o'clock P. M., again came the same parties, and thereupon the following proceedings were had:

"Mr. Ammen: If the court please, Mr. Mayer had drafted an order to be entered in the

case, but did not furnish us with a copy of the same until 12:30 today, and I would like to have two or three days in which to furnish to him our draft of the order as we think it ought to be entered, if entered according to your Honor's opinion, and we object to the order as prepared by Mr. Mayer.

"It was thereupon agreed that Mr. Ammen would furnish to Mr. Mayer such draft of order on or before December 25, 1907, and that the parties should appear before the court again at 10 A. M. on Thursday, December 26, 1907, with the view of having the terms of the order to be entered then settled by the court.

"And afterwards, namely, on *December 26, 1907*, at the hour of 10 o'clock A. M., again came the said parties by their said solicitors, and thereupon proceedings were had in said cause as follows:

"Mr. Ammen: If the court please, I have here a motion to dismiss the suit.

"(Said motion is hereby referred to and made a part of this certificate of evidence.)

"Mr. Mayer: I don't think this motion to dismiss the suit is going to supplant what your honor has set for hearing this morning?

"The Court: What is that motion?

"Mr. Ammen: This is bringing up the motion that was filed October 1st.

"The Court: That motion is denied, and complainant excepts.

"Mr. Ammen: I have numbered that motion Number 1. I have here a series of four others, numbered, respectively, 2, 3, 4 and 5, which I desire to present in order. I have authorities here in support of these motions.

"The Court: No, make your motions; I will rule on the motions. I can take care of the motions in one minute."

• • • • •

(2) And, on December 26, 1907, in connection with the settlement of the terms of the order *then* entered (under date of December 13, 1907), the following occurred, as shown on pages 226-227:

“Mr. Harding: *The motion to remand in the second case has been filed.* You say it is substantially determined by your ruling in the other. *That record don't contain any hearing on that point.* If your Honor will kindly make an order upon that. We cannot get out of this court until we get that refusal to remand.

“The Court: The order restraining the prosecution of the second suit is of the 13th of December. I will allow the record to show these motions to dismiss the first suit made today. I will not allow the affidavit to be filed. You may save your point on that. I think it is unreasonable, it is entirely out of place now.”

(3) And, on the same date, namely, December 26, 1907, the following occurred, as shown on pages 230-232:

“Mr. Harding: Your Honor will also pass upon the other motion, the motion to remand in the other case, of record.

“The Court: The second case stands in whatever situation this order finds it.

“Mr. Harding: We offered a motion to remand and filed it. We want that motion simply passed upon by your Honor.

“The Court: *The order of the court in the first case restrains the parties from proceeding in any other case with this litigation; holds the first case in this court, until this order of injunction is reversed, in whatever posture the order finds the record in the first case. I don't care to go on and enter any other orders in the second case, on motion to remand, or any motions in the second case.*

"Mr. Harding: We want an order overruling it. We have filed the motion. We cannot take anything up. The cases are independent upon this record, except in the opinion of your Honor. We moved to remand long before the entry of this order, and now we only want an order upon that motion; if you say it is too late, or whatever you are pleased to say.

"The Court: Did you ask me to remand before this court came—

"Mr. Harding: During the hearing.

"The Court: While this matter was being heard—this motion in the first case was being heard?

"Mr. Ammen: Yes, in this respect, I remember this one thing that occurred. We asked your Honor if we could give notice—

"The Court: Afterwards.

"Mr. Ammen: That was pending this hearing.

"The Court: You came here after the matter had been submitted to the court on this application.

"Mr. Ammen: Yes, before the decision.

"The Court: *Yes, now the view of the court in this matter is this, as I have indicated four or five times. The view of the court is that this order restraining the parties from going on with the first case applies to the parties here and in the state court and anywhere, going on in the second case.*

"Mr. Ammen: *In our draft of the order we asked that this be without prejudice to the motion to remand.*

"The Court: *I won't enter that order.*

"Mr. Ammen: I merely want to call the court's attention to that. *After they got this injunction from Judge Kohlsaas and ruled us to show cause why this second suit should not be restrained, they removed the second case to this court. Now the view of your Honor is that*

although they took that step *after they got that restraining order, we must leave it there. Are we not liable to be thus prejudiced in that suit?*

"The Court: Not if you read the order of injunction. The motion to take up these other matters may come along when this motion, when this order which the court has entered has been modified under an order of the court authorized to give instructions to this court.

"Mr. Harding: Then we are locked up entirely until there is a hearing. Can't we move to dismiss in the first case?

"Mr. Mayer: That has been overruled.

"Mr. Ammen: Will this order state that we have objected and excepted to the terms of this present order just entered?

"The Court: The record will show that.

"Mr. Harding: It will show our several motions to dismiss.

"The Court: You have made several motions.

"Said several motions to dismiss filed herein are hereby referred to and made a part of this certificate of evidence.

"Mr. Harding: And the motion to remand?

"The Court: I HAVE SAID AT LEAST A HALF DOZEN TIMES THAT THAT MOTION TO REMAND I WOULD NOT HEAR. THIS ORDER ENJOINING THE PARTIES IN THE FIRST SUIT FROM PROSECUTING THE SECOND SUIT OR GOING ON WITH THE SECOND SUIT COVERS A MOTION TO REMAND AS PLAINLY AS IT COVERS ANY OTHER SORT OF A MOTION IN THE SECOND CASE. DO YOU UNDERSTAND THAT PROPOSITION?

"Mr. Harding: *But who understands that in that record? If we take up the second case, the motion to remand is found there. There is no order made upon it and no order made in that case at all. Isn't it a very easy thing for your Honor to say that you have already overruled it, if—*

"The Court: My view of this situation is such that I don't think you have a right to be going



on with these two suits at once, in the Federal Court and State Court, or anywhere else.

“Mr. Mayer: The order which you have just entered is in the first suit. The motion to remand which was long since overruled—

“Mr. Ammen: It is in the second suit.

“Mr. Mayer: *This present order is in the first suit* AND SHOULD BE ENTERED AS OF DECEMBER 13TH. There is no motion to remand pending in the first suit; that has been overruled long ago. The motion to remand in the second suit is here on file. You are not disposing of that motion, you are entering no order in the second suit.

“The Court: I AM ENTERING AN ORDER IN THE FIRST SUIT, THAT THERE SHALL NOT BE EVEN A MOTION TO TAKE UP THE MOTION TO REMAND.

“Mr. Harding: *That is all right. I would only want your Honor to say so, otherwise MR. MAYER WILL SAY THERE WAS NO ORDER.*

“Mr. Mayer: Well, I have been through practical experience with these gentlemen before, and you follow this case as it proceeds and see if I am right.

“Mr. Ammen: All we want is to make sure that your Honor states in the order specifically what you hold.

“The Court: I will do whatever Judge before whom it comes up the justice to assume that he will understand.

“Mr. Harding: This order says nothing about the motion to remand.

“Mr. Mayer: THIS PRESENT ORDER IS ENTERED AS OF DECEMBER 13TH, MR. CLERK.

“THE COURT: DECEMBER 13TH.

“And thereupon said respondents, severally, objected and excepted to the respective findings of the court in the said order last above referred to, and to the entry of the said order, and the respective portions thereof, and the action of

the court in entering the same, or directing the entry thereof, *and, particularly, to the action of the court in directing the entry thereof to be made AS OF December 13, 1907.*"

"SUPPLEMENT" TO REMOVAL PETITION.

TWENTY-SEVENTH: On November 6, 1907, there was filed in the office of the Clerk of said United States Circuit Court, in the said suit brought by your petitioner, without leave of court, and without notice to or consent of your petitioner, a certain so-called "supplement" to said removal petition therein, setting forth the citizenship of the individuals made defendants to your petitioner's said bill of complaint. Said so-called "supplement," together with the affidavit of G. W. Powers attached thereto and filed therewith, is shown on pages 412-414 of Part II of said "Exhibit A." (On June 30, 1909, by motion stated in his petition dated June 29, 1909, and hereinafter shown, your petitioner moved to strike said "supplement" from the files.) Your petitioner here quotes from said so-called supplement as follows:

"Now comes said Corn Products Manufacturing Company and submits the following in support of and in conjunction with and supplemental to the petition originally filed by your petitioner in the Superior Court of Cook County, Illinois, on the application to remove said cause to this court, and which petition is a part of the transcript of the record filed herein:

"Your petitioner says that \* \* \* Charles L. Glass, William J. Calhoun, Joy Morton and T. B. Wagner, defendants in said suit, were at the time of the commencement of said suit and continuously since have been and still

are, respectively, *citizens of the State of Illinois, and residents of the City of Chicago* in said Eastern Division of said Northern District of Illinois; that H. G. Herget, defendant in said suit, was at the time of the commencement of said suit, and continuously since has been and still is *a citizen of the State of Illinois*, and a resident of Pekin, in said State of Illinois."

TWENTY-EIGHTH: On April 15, 1909, while said motion to modify said judgment of the United States Circuit Court of Appeals was still held under advisement by that court, and while your petitioner was still in the east awaiting information with reference to the decision of the Supreme Court of the United States in the said proceedings for *certiorari*, and to procure a certified copy of the order showing such decision, a notice entitled in the said suit of your petitioner in the said Circuit Court, and addressed to your petitioner and William J. Ammen, was served on said Ammen; but the same was never served upon your petitioner, who alone had theretofore appeared in the said Circuit Court in the said suit brought by your petitioner, and who alone was then the attorney or solicitor of record for complainant therein, *and the only appearance theretofore entered by your petitioner therein was in and by his said motion to remand said cause as above set forth*. Said notice so served on said Ammen on April 15, 1909 (omitting title of cause) read as follows:

"To George F. Harding and William J. Ammen, Solicitors for Complainant:

"Take notice that on Friday, April 16, 1909, at 10 o'clock a. m., or as soon thereafter as the

matter can be heard, we shall present to the Honorable K. M. Landis, in the court room usually occupied by him, *a motion for leave to amend the petition for removal* of the Corn Products Manufacturing Company which appears in and is part of the transcript filed herein on November 6th, 1907.

"A copy of the motion of said Corn Products Manufacturing Company, and of the affidavits of Levy Mayer and of Harlen H. Parmenter, is herewith served on you.

"CALHOUN, LYFORD & SHEEHAN,

"*Solicitors for Corn Products*

"*Manufacturing Company.*

"LEVY MAYER

"*of Counsel.*"

PETITION, APRIL 16, 1909, FOR LEAVE TO AMEND REMOVAL PETITION OF NOVEMBER 5, 1907.

TWENTY-NINTH: Pursuant to said notice, the said Levy Mayer, whose name was signed to said notice, as counsel for said Corn Products Manufacturing Company, and said Ammen, appeared before said District Judge, Kenesaw Mountain Landis, on April 16, 1909, and thereupon said Mayer presented to said United States Circuit Court, before said Judge, *the petition of said Corn Products Manufacturing Company*, verified (on information only), by one Fisher, as president of that company, praying for leave to amend the said removal petition theretofore filed by said Manufacturing Company in the said Superior Court, together with the written consent of the other defendants to your petitioner's said bill of complaint thereto attached, and the affidavits of said Mayer, and one Parmenter, thereto attached. A copy of said petition so presented on April 16, 1909, to-

gether with said consents and affidavits thereto attached, marked "Exhibit C," is hereto annexed. Said petition prayed leave to amend said original removal petition *by striking therefrom* its averment that said George F. Harding was, on October 19, 1907, and thereafter, a *citizen and resident of CALIFORNIA, and inserting therein*, IN LIEU OF SAID AVERMENT SO STRICKEN OUT, an averment that said Harding was, on October 19, 1907, and thereafter, a *citizen and resident of CHICAGO, ILLINOIS*.

THIRTIETH: A true and complete copy of the shorthand reporter's transcript of the proceedings before said Judge Landis, on April 16, 1909, in said cause, marked "Exhibit D," is hereto annexed.

THIRTY-FIRST: A true and complete copy of the special appearance filed by said Ammen in said cause on April 16, 1909, marked "Exhibit E," is hereto annexed. The changes therein in ink were made by said Judge Landis after the filing of the same as shown in said "Exhibit D."

#### LEAVE GIVEN TO FILE PETITION TO AMEND.

THIRTY-SECOND: Against the objections and protests of said Ammen, appearing specially for your petitioner, as aforesaid, said District Judge thereupon entered an order, on April 16, 1909, on motion of said Mayer, granting leave to said Corn Products Manufacturing Company to file in said cause its said petition for leave to amend said original removal petition, together with the said consent papers and affidavits thereto attached, and thereupon the same was filed by said Mayer in said cause on April 16,

1909. A copy of said order of April 16, 1909, granting such leave, marked "Exhibit F," is hereto annexed. Your petitioner here quotes therefrom as follows:

"Now comes on to be heard the motion \* \* \* for leave to amend \* \* \* the petition for removal in said cause \* \* \* and the said George F. Harding appears by William J. Ammen, his solicitor, *who, however, protests that he appears specially only for the purpose of this motion*, AS STATED IN HIS WRITTEN APPEARANCE THIS DAY FILED HEREIN.

"Whereupon counsel for said Corn Products Manufacturing Company *press* said motion for disposition, and said Ammen \* \* \* objects to the hearing of said motion at this time BECAUSE OF THE ABSENCE of said Harding; thereupon, in consideration of the stipulation hereinafter referred to, entered into by said Ammen, in open court, IN ORDER TO AVOID THE OBJECTION TO SAID CONTINUANCE, *the hearing of said motion to amend is hereby continued* \* \* \* until Friday, April 23, 1909, at 10 A. M. \* \* \*"

#### STIPULATION EXACTED.

THIRTY-THIRD: As already shown by this petition and its exhibits, said Ammen was required by the said District Judge on April 16, 1909, as a condition of one week's postponement of the hearing of said petition for leave to amend, to stipulate as solicitor for your petitioner and others, as shown by said order of April 16, 1909, that no steps whatsoever should be taken by your petitioner, or others, in said appeal then still pending in said Court of Appeals, or in the said suit brought by your petitioner, or in said Real Estate Company's suit, until after

the hearing and decision *of record* of said petition of said Corn Products Company for leave to amend its original removal petition, your petitioner being thus prevented and debarred from moving for the issue of the mandate of the said United States Circuit Court of Appeals, in said cause pending in that Court, and also from bringing on for hearing in said Circuit Court his said motion to remand filed on December 23, 1907, and from any other action therein.

CHANGE OF VENUE TO JUDGE SELECTED BY JUDGE  
LANDIS.

THIRTY-FOURTH: On April 23, 1909, said Judge Landis, in open court, orally directed that the further hearing of said motion for leave to amend said removal petition in said cause be had before the Honorable Arthur L. Sanborn, District Judge of the United States District Court in and for the Western District of Wisconsin. Whereupon, the hearing of said petition for leave to amend said removal petition began before said Judge Sanborn, and such hearing continued from time to time, and after the hearing of proofs and arguments therein, the same was taken under advisement by said Judge Sanborn on the 4th day of May, 1909, and his opinion on said petition for leave to amend was filed in said cause on May 15, 1909, and an order was entered therein by him, dated May 15, 1909, pursuant to said opinion, as hereinafter more fully shown.

OBJECTIONS AND ANSWER TO PETITION FOR AMEND-  
MENT.

THIRTY-FIFTH: In the course of said hearing of said petition for leave to amend said original removal petition, said Judge Sanborn, on the 1st day of May, 1909, granted leave to your petitioner to file in said cause his objections and answer to said petition for leave to amend, and pursuant thereto the same was filed by your petitioner in said cause on May 1, 1909, and the same appears on pages 10-25 of Part I of said "Exhibit A."

Your petitioner here quotes the first paragraph of his said "OBJECTIONS AND ANSWER TO THE PETITION OR MOTION OF THE CORN PRODUCTS MANUFACTURING COMPANY, FILED ON APRIL 16, 1909, FOR LEAVE TO AMEND THE REMOVAL PETITION IN SAID CAUSE," AS FOLLOWS:

*"Your complainant, George F. Harding, appearing herein specially and for the purpose only of objection to the jurisdiction of the court in this cause as stated in his motion filed herein on December 23, 1907, to remand said cause, AND OBJECTING AND INSISTING THAT THIS COURT HAS NO JURISDICTION OF THIS CAUSE, OR OVER THIS COMPLAINANT, AND HAS NO POWER OR AUTHORITY OR JURISDICTION TO ALLOW OR EVEN ENTERTAIN THE SAID MOTION OR PETITION FOR LEAVE TO AMEND, and without consenting to the removal of this cause to this court, AND STILL INSISTING UPON HIS MOTION TO REMAND THE SAME, your complainant by way of further answer and objection to the said parties [petition] for leave to amend, shows unto your Honor, the Honorable Kenesaw M. Landis, and represents, as follows:"*



Following the above quoted paragraph of said "Objections and Answer," your petitioner therein referred, *in support of such objections*, to the files and records in said Real Estate Company's suit, and to the proceedings in the said appeal prosecuted to the said Court of Appeals, as shown by the said printed record filed in said proceedings for *certiorari* in the United States Supreme Court, including the petition of said Mayer for rehearing, and denial thereof, and the stay of mandate in said appeal, at the instance of said Mayer, to the end that he might apply for such *certiorari*, and said petition for *certiorari*, and your petitioner's reply thereto, and denial thereof by said Supreme Court on April 12, 1909, and to the terms of said decretal order of December 26, 1907, so appealed from, STILL REMAINING IN FULL FORCE AND EFFECT BY REASON OF SUCH STAY OF MANDATE, and thus forbade and enjoined said motion to amend removal petition, and all other action in your petitioner's said suit, UNTIL SUCH MANDATE COULD BE FIRST ISSUED AND OBEYED; and that UNTIL THEN the said Circuit Court was wholly WITHOUT POWER OR JURISDICTION IN THE PREMISES, ALL OF WHICH FILES AND RECORDS so referred to in said "Objections and Answer" WERE MADE EXHIBITS THERETO; and it was further alleged therein that "THIS COURT IS WITHOUT POWER OR JURISDICTION TO ALLOW OR HEAR THE SAID PETITION FOR LEAVE TO AMEND, and the same should therefore be stricken from the files, dismissed, and not allowed by the court," upon the several grounds stated therein. Said "Objections and Answer" further alleged that your petitioner immediately after denial of said petition for *certiorari*, on

April 12, 1909, moved the said Court of Appeals for issue of mandate to said Circuit Court, and that said motion for mandate was resisted by said Mayer, and his associates, "under color of an application for modification of the opinion or order of said Court of Appeals," with a printed brief in support thereof, *and that said motion for mandate and said motion to modify were both under advisement before the said Court of Appeals*, and said mandate still stayed, WHEN SAID PETITION FOR LEAVE TO AMEND SAID REMOVAL PETITION WAS PRESENTED AND FILED ON APRIL 16, 1909.

Thereupon said "Objections and Answer" proceeded as follows:

"6. *Your complainant further shows that it was thus, while all action was stopped in the Circuit Court and in the said Court of Appeals by the said Mayer and his associates, and the issue of the said mandate thus delayed*, IT WAS IN THIS SITUATION, *that counsel for your complainant, WAS REQUIRED on April 16, 1909, BY ORDER OF THIS COURT, to stipulate of record herein not to take any step in this court, or elsewhere, in this case, or in said case No. 28695, until the hearing and decision of this said petition for leave to amend, NOTWITHSTANDING THE PENDENCY OF THE SAID APPEAL, WITH SAID INJUNCTION OF DECEMBER, 1907, STILL IN FULL FORCE AND EFFECT AGAINST YOUR COMPLAINANT; and your complainant insists that this attempt to amend, made in this position, and leave now asked to make such amendment, notwithstanding the fact that no mandate has yet been issued, or ordered by the said Court of Appeals, AND WHILE YOUR COMPLAINANT WAS AND STILL IS ENJOINED FROM ANY PROCEEDINGS in either of the said suits, except applying to intervene, as aforesaid, and becoming a party to the said dead case of the said*

Real Estate Company, is improper and grossly unfair and should be prevented and denied by the court.

"7. It was while this state of the case continued that this petition for leave to amend was presented herein, AND IN THE ABSENCE OF YOUR COMPLAINANT, a citizen and resident of the State of California, and while he was absent from the State of Illinois, AND WITHOUT COUNSEL OF RECORD IN THIS CAUSE OTHER THAN HIMSELF, and your complainant having never appeared in the case except by his motion to remand, and only appeared in the state court by the filing of his bill therein, and the issue of process for service upon the defendants, and the issue of subpoenas to compel the defendants themselves to testify as to the matters and charges in this bill; and it was while your complainant was actually before the Notary Public, awaiting the attendance of the defendants, and especially those of them who had been subpoenaed as witnesses by your complainant, IT WAS AT THAT VERY TIME THAT SAID PETITION OF NOVEMBER 4, 1907, WAS PRESENTED IN THIS COURT, SECRETLY AND WITHOUT NOTICE, AND YOUR COMPLAINANT WAS THEN RESTRAINED WITHOUT NOTICE, AND HAS EVER SINCE BEEN RESTRAINED, FROM FURTHER PROCEEDINGS IN THIS CAUSE, as shown by the said order of November 4, 1907, and the said injunction order of December, 1907, to all of which reference is hereby made.

"8. Your complainant further shows that while this was the state of the case in this court, and in said Court of Appeals, and while no action could or should have been had, as above set forth, this attempt to amend the said removal petition has been made in the absence of your complainant, and your complainant charges that such attempt was and is a deliberate and wilful and fraudulent attempt to obtain an undue ad-

vantage by the entry of the order prayed for in the said petition for leave to amend.

“9. *Your complainant further shows that the removal of this cause from the state court was secretly obtained, in defiance and contempt of the law, and of the state court, and without right; and your complainant did not even learn of such removal to this court until long afterwards, namely, after November 12, 1907, or on that date, upon the hearing pursuant to which the said order of December, 1907, was entered by this court; and when your complainant first learned of said removal he had already been enjoined and restrained from taking any action in this case by said order of November 4, 1907, obtained secretly and without notice, as above set forth; and promptly after learning of said removal, your complainant applied to Your Honor, and repeatedly so applied, to hear your complainant's motion to remand this cause to the state court, as shown by said printed transcript of record, to which reference is hereby made, and your complainant shows that he had a right to have the said motion to remand heard promptly, upon the record as it THEN stood in this cause, and without this desired or proposed amendment to said removal petition; and your complainant shows that after repeated applications to Your Honor to hear, or fix a time for hearing his said motion to remand this cause, he filed herein, on December 23, 1907, his full and careful written motion to remand the same, to which reference is hereby made, showing therein that there was no jurisdiction or power in this court to make such order of removal, and that such order ought not to have been entered, and pointing out why, and showing that it was forbidden by the Act of Congress, as construed by the U. S. Supreme Court in the case of *Ex parte Wisner*, 203 U. S., 449. The said motion to re-*

mand hereby referred to is shown on pages 238-40, of said printed transcript of record."

Said "Objections and Answer" thereupon set forth, in detail, the efforts of your petitioner in December, 1907, to obtain a hearing before said Judge Landis of his motion to remand said cause to the state court, quoting, for that purpose, at length, from the certificate of evidence signed by said Judge Landis, as shown on pages 216-37 of Part II of said "Exhibit A," and as already shown in paragraph numbered twenty-six in this Petition. Your petitioner further quotes from said "Objections and Answer," as follows:

"13. Your complainant further alleges that the truth is as stated in said bill as to the residence of said complainant, and it was untrue that he was, as alleged in said petition, and affidavit, namely: that he was not a citizen or resident of the State of Illinois on October 19, 1907, when this bill was filed in this cause; but the contrary is shown by the affidavits of Colonel Joseph H. Strong, and Doctor DeVeney, and others, all old neighbors and associates of your complainant when your complainant resided in Illinois and men of the highest character, and most fully informed in relation to the matters mentioned in said affidavits, and also by the affidavits of A. C. Snyder, Addie C. Harding, Anna M. Burson, Frieda Hartman, Ellen Harding, E. Sanders, John L. Zweck, Abner C. Harding, George F. Harding, Jr., Charles B. McCoy, Gregory T. Van Meter, Albert B. Joyner, Ada E. White, and William J. Ammen, all of which affidavits are presented with this answer and objections, and made a part hereof, and exhibits thereto in support hereof."

"16. Your complainant further shows that

this petition to amend said removal petition is merely a fraudulent attempt on the part of the defendants to this bill to prevent proof of the facts set forth in the bill showing that they have seized in defiance of law and of right some \$20,000,000 of property, and they are asked by the bill to permit proof to be made in support of such charges, and in the effort to make such proof by the testimony of the defendants themselves your complainant was actually engaged on November 4, 1907, at the very hour when the first attempt was made by the defendants by said petition of November 4, 1907, *ex parte*, and without notice, as above set forth, to defeat and delay justice and compel this case to be transferred to this court and appended to the said dead case in the Federal Court.

"17. Your complainant further states and shows unto Your Honor that he *denies the right or power of the court to make the order of amendment for which the petition asks, or grant such leave to amend*; and your complainant shows that it would be a great injustice and entirely without precedent to permit the progress of this case to be stopped and stayed by an investigation of the residence and citizenship of this complainant, *so long undisputed*, upon no other basis than the information and belief of the unknown Parmenter whose conclusions and opinions stated in his affidavit are of the most general description, and false and absurd, and should be disregarded, and the same are entirely untrue as alleged by your complainant, and by a host of witnesses, some of which, nearly twenty in number, know the facts; not one of which facts are stated as known to be true to the knowledge of any party mentioned in the petition for the amendment or in any affidavit attached thereto; and upon such slender foundation the progress of any case may at any time be stopped to the great prejudice and injury of

suitors; and it is important for this court to know that in the presence of this court the solicitor and attorney, said Mayer, who has had the conduct of all this litigation, as he claims, for a part of the clients, has stated his determination, and in obedience to the request of his clients, to litigate every question connected with the litigation, and who has as the said records show, made the most desperate attempts, at every point, in the case, and in said case No. 28695, to delay and defeat justice, and on grounds which, when investigated, are found to be without any foundation and without the slightest merit."

\* \* \* \* \*

*"Wherefore, and for other reasons, your complainant prays that the said petition for leave to amend said removal petition may be stricken from the files by order of this court, or dismissed, and wholly disallowed and denied, and your complainant will ever pray, etc."*

Said "Objections and Answer" bears date April 22, 1909, and was signed by said George Harding, and sworn by him on that date.

THIRTY-SIXTH: Against objections and protest of your petitioner, there was also filed in said cause on the 4th day of May, 1909, on said hearing before said Judge Sanborn, a so-called "replication" of said Corn Products Manufacturing Company to the said objections and answer filed therein by your petitioner. Said so-called "replication" is shown on pages 52-69 of Part I of said "Exhibit A."

OPINION AND ORDER ALLOWING AMENDMENT, MAY  
15, 1909.

THIRTY-SEVENTH: A true and complete copy of said opinion of said Judge Sanborn filed in said cause on May 15, 1909, is shown on pages 70-76 of Part I of said "Exhibit A." (Said opinion is reported in 170 Fed., 650.) And a copy of said order entered pursuant to said opinion, granting leave to amend said removal petition, marked "Exhibit G," is hereto annexed.

YOUR PETITIONER QUOTES FROM SAID OPINION, FILED MAY 15, 1909, as follows:

"Motion for leave to amend original removal petition of Corn Products [Manufacturing] Co. The suit was commenced Oct. 23 [19], 1907.  
\* \* \* On November 5, 1907, the Corn Products [Manufacturing] Co. filed its petition for removal on the ground of separable controversy. The petition stated that said suit presented a *separable controversy between* COMPLAINANT and PETITIONER. \* \* \* THE NATURE OF THE SEPARABLE CONTROVERSY IS NOT STATED, and the individual defendants are *assumed* to be only *nominal* defendants. It *seems* to have been also *assumed* that the nature of the separable controversy sufficiently appears from the amended bill."

Said opinion then refers to the notice of November 5, 1907, that removal petition would be presented to Judge Ball, and to the order of CIRCUIT COURT on Nov. 6, 1907, directing filing of transcript in said Circuit Court, and restraining further prosecution of the suit in state court, and the so-called "supple-



ment" to removal petition filed in said Circuit Court on Nov. 6, 1907, which the opinion says was a "*verified*" statement alleging the citizenship of the individual defendants. The opinion then refers to proceedings in the Real Estate Company's suit, including the injunction order appealed from in that case, *describing same as "order of Dec. 13, 1907,"* and states that said injunction appealed from "was issued on the theory that the Harding suit was really the same as the Loan & Trust Company's suit." The opinion then refers to the motion to remand filed in the Harding suit on Dec. 23, 1907, and briefly states the points raised by that motion and quotes therefrom, and thereupon states as follows:

"It is claimed by complainant that this motion to remand is based upon *Ex Parte Wisner*, 203 U. S., 449. \* \* \* This is not clear, and the motion is quite different from the one filed in the *Wisner* case. This is not important except that the motion does not distinctly apprise defendants that the *Wisner* case was relied on.

"The Circuit Court regarded the motion to remand as *unimportant, because of the pendency of the prior case of the Loan & Trust Company, and would not permit it to be brought on because of the injunction in the first case.* Meanwhile, however, the Loan & Trust Company moved for leave to dismiss the first suit. Leave was denied; but on appeal from the injunction order it was held that it should have been granted. (*Harding v. Corn Products [Refining] Co.*, Jan. 19, 1909.) \* \* \*

"With the bill in the first suit dismissed the Harding suit became the only one pending, and the importance of the removal and the motion to remand HAVING BEEN BEFORE THAT OF LITTLE IMPORTANCE, at once became matters OF GREAT

IMPORTANCE AND CONCERN to the *respective parties.*"

The opinion then refers to *the petition* filed April 16, 1909, *for leave to amend removal petition*, and then states as follows:

"Complainant answered the petition *appearing specially and for the purpose only of objection to the jurisdiction of the court*, as stated in his petition to remand filed December 23, 1907, and *insisting that the court has no jurisdiction, no power or authority to allow or ENTER-TAIN the motion to amend.* Other objections are stated and it is submitted that complainant is and long has been a citizen of California. \* \* \* It seems \* \* \* the motion for leave to amend should be granted, IF the POWER of amendment EXISTS. Defendant relies on *Wilbur v. Red Jacket, etc., Co.*, 153 Fed., 662, a case very much like this, for its procedure in bringing its petition for leave to amend.

"*In regard to the question of POWER, it is insisted THAT NO JURISDICTION IS SHOWN BY THE ORIGINAL PETITION FOR REMOVAL.* \* \* \* The lower federal courts are *hopelessly divided* on this precise question, but the practice under the Act of 1789 seems to have been clear."

The opinion then refers to the provisions of the Act of 1789, and the decisions construing same, and then proceeds as follows:

"Before the decision of *Ex Parte Wisner*, in 1906, the decisions of the Circuit Courts of Appeal and of the Circuit Courts, while by no means uniform, were generally in support of the right of removal, even against the plaintiff's objection. The argument in favor of removal is stated by Judge Newman in *Rome Petroleum & Iron Co. v. Hughes Specialty Well*

*Drilling Co.*, 130 Fed., 585. \* \* \* Judge Newman therefore denied a motion to remand a case brought in Georgia by a citizen of South Dakota against a citizen of South Carolina. Judge Newman cites *in support of the ruling* \* \* \* the language of the Chief Justice in *Davidson v. Railroad Co.*, 157 U. S., 201; 39 L. Ed., 672; 15 S. Ct., 563; *while the Chief Justice himself, in the Wisner case, cites the same case* AS HOLDING THE VERY OPPOSITE. *This illustrates* THE VERY UNSATISFACTORY SITUATION IN WHICH THE COURT FINDS ITSELF IN ATTEMPTING TO DECIDE WHETHER THIS PARTICULAR CASE WAS REMOVED BY THE PRESENTATION OF THE REMOVAL PAPERS TO THE STATE COURT, AND THE DOCKETING AND INJUNCTION ORDER OF THIS COURT THEREIN.

“Since the decision of the *Wisner* and *Moore* cases *there can be no question of the duty to remand on application of a plaintiff*, in the usual case, IN THE ABSENCE OF ANY APPLICATION TO AMEND. But the *narrow and unusual* question here presented is whether a federal Circuit Court can *possibly have any jurisdiction whatever* of such a case as this *until the plaintiff consents*. If it can, then amendment *may be permitted to show that jurisdiction actually exists unaided by consent or waiver; but if not, THEN A REMAND IS INEVITABLE.* [Citing cases.] \* \* \* *In view of the confusion surrounding this question arising from the decisions under the act of 1887-1888, it is refreshing to refer to the plain, satisfactory and uniform construction of the similar clause of the original Act of 1789, as stated by Chief Justice Marshall in Gracie v. Palmer, supra [8 Wheat., 698]. And in view of such construction, and that a decision in favor of the jurisdiction may be readily reviewed, WHILE A DECISION AGAINST IT CANNOT, the power to amend the petition should be affirmed, and the petition to amend granted, if the individual defendants were merely formal parties defend-*

ant. That they were such seems clear to me from the cases of *Geer v. Mathiesen Alkali Works*, 190 U. S., 429 \* \* \*, and *Lamm v. Parrott Co.*, 111 Fed., 241.

"A further question is raised as to the sufficiency of the statement in the removal petition of a separable controversy. It is usual in such petitions, and generally considered NECESSARY, to allege the nature of the controversy; but if it appears from the record that such a controversy actually existed, it is enough. *This court by its docketing and restraining order of Nov. 6, 1907, took jurisdiction of the case, thus sustaining its jurisdiction. This it had THE POWER to do. That order was made MORE THAN TWO TERMS SINCE, and cannot now be reviewed in this proceeding, or in any other, in this court.* This was decided in *Des Moines Nav. Co. v. Iowa Homestead Co.*, 123 U. S., 552 \* \* \*, approved by the Supreme Court in *Chesapeake & O. R. Co. v. McCabe*, by decision filed April 6, 1909.

"I think, therefore, that the petition to amend should be granted. If it were disallowed, and the case remanded, there could be no review. \* \* \* On the other hand, complainant has TWO remedies, MANDAMUS IN THE SUPREME COURT TO COMPEL REMAND, or if a decree goes against him he may have the question reviewed on appeal. *Ex Parte Wisner, supra.* Leave to file the amended petition is granted."

NOTE: The prayer was not for leave to file an "amended petition," but for leave to amend original removal petition, and the amendment actually allowed by the order entered pursuant to said opinion, as shown by said "Exhibit G," permitted an amendment only as to the citizenship and residence of said George F. Harding; and the amendment actually

*filed*, as stated in the 39th paragraph of this petition, and as shown by "Exhibit I" referred to in said paragraph, *related alone to the question of citizenship and residence of said Harding.*

THIRTY-EIGHTH: On May 22, 1909, your petitioner presented in writing, after due notice to said Levy Mayer, his motion, *first*, that said so-called replication be stricken from the files; and, *second*, that said order granting leave to amend should be vacated and set aside; and said motions were taken under advisement by said Judge Sanborn on the 22d day of May, 1909, and the same were, on the 12th day of June, 1909, denied by order of that date, and by said order leave was granted to your petitioner to then file his said written motions, embraced in one paper, *nunc pro tunc*, as of May 22, 1909, and a copy thereof so filed *nunc pro tunc*, together with a copy of said order of June 12, 1909, marked "Exhibit H," is hereto annexed.

AMENDMENT FILED JUNE 14, 1909.

THIRTY-NINTH: On June 14, 1909, said Corn Products Manufacturing Company filed its amendment to said original removal petition, a copy of which amendment, marked "Exhibit I," is hereto annexed. By said amendment allowed against the objection and protest of your petitioner the allegation in said removal petition as to your petitioner's citizenship and residence in CALIFORNIA was stricken out, and in lieu thereof it was alleged that such citizenship and residence was in Chicago, Illinois, as

shown by said "Exhibit I." No other amendment was allowed or made to said original removal petition.

MANDATE OF COURT OF APPEALS ISSUED AND MOTION  
TO OBEY SAME.

FORTIETH: On June 28, 1909, the mandate of the said United States Circuit Court of Appeals in the said appeal prosecuted by your petitioner, and others, was issued by the Clerk of the said Court of Appeals, and the same was thereupon filed, by leave of said Judge Sanborn, in said Real Estate Company suit on next day. A true and complete copy of said mandate is shown on pages 93-98 of Part I of said "Exhibit A." And on the opening of court June 29, 1909, before said Judge Sanborn, said Real Estate Company moved for entry of an order *in obedience to said mandate*; said motion was thereupon taken under advisement, and allowed on July 1, 1909, as hereinafter shown. Said mandate recites that order staying same was vacated by said Court of Appeals on May 19, 1909.

PETITION TO DISREGARD AMENDMENT PROCEEDINGS AS  
VOID AND ALLOW ORIGINAL MOTION TO REMAND.

FORTY-FIRST: By the filing of said mandate, and said motion to obey same, your petitioner was thus left free, *for the first time*, to bring on for hearing his said motion to remand, filed on December 23, 1907. Wherefore, on June 30, 1909, after due notice to said Levy Mayer, your petitioner, after said

motion for order in obedience to said mandate had been thus taken under advisement, presented to said Judge Sanborn his verified petition in said cause. Said petition presented June 30, 1909, is shown on pages 86-92 of Part I of said "Exhibit A."

Your petitioner quotes from said petition presented June 30, 1909, as follows:

"Now comes the said complainant, George F. Harding, appearing specially herein, and, *while saving and reserving, and preserving his objections heretofore made to the jurisdiction of this court in this cause*, AS STATED IN HIS MOTION FILED HEREIN ON DECEMBER 23, 1907, TO REMAND SAID CAUSE TO THE STATE COURT, and as otherwise stated of record in this cause, *and still insisting that this court has not and never had any jurisdiction of or in this cause, or over or against this complainant in said cause, or any authority or power therein*, EXCEPT TO REMAND THE SAID CAUSE TO THE STATE COURT, *and saving and reserving, and preserving his objections and exceptions to the several orders of this court in this cause, and every of them, and every part thereof, and insisting that all and every of said orders*, INCLUDING PARTICULARLY, THE ORDER PERMITTING AMENDMENT TO REMOVAL PETITION IN SAID CAUSE, *were and are* WITHOUT POWER OR AUTHORITY OR JURISDICTION ON THE PART OF THIS COURT, and therefore wholly null and void, this complainant respectfully represents and states to the court the following, namely:—

"1. That the Corn Products Refining Company (one of the defendants in this cause, and one of the defendants in the suit in Chancery brought by the Chicago Real Estate Loan & Trust Company, an Illinois corporation, as complainant, against the said Corn Products Refining Company, and others, as defendants, in

the Circuit Court of Cook County, Illinois, on May 4, 1907, and removed to this court on June 8, 1907, being a suit in chancery numbered 28695 in this court) presented to this court on November 4, 1907, its petition (or motion) entitled and filed in the said Real Estate Company's suit, purporting to be sworn to upon that date by one Hal C. Bangs, which petition (or motion) now remaining on file in the said suit Numbered 28695 is hereby referred to and made a part of this petition, and an exhibit hereto.

"2. The said petition (or motion) of November 4, 1907, was so presented on that date to this court in said suit numbered 28695, by one Levy Mayer, acting as the attorney and solicitor of the said petitioner, *ex parte*, AND WITHOUT NOTICE to and without the knowledge of the said Real Estate Company, or this complainant, or any other person, or persons, other than the said Corn Products Refining Company, and upon such presentation thereof an order was entered in said suit numbered 28695 by this court on that date, November 4, 1907, *ex parte*, and *without notice*, as aforesaid, restraining this complainant, George F. Harding, and his solicitor, A. B. Joyner, from further prosecuting this suit, now numbered 28865, in this court, and then pending in the Superior Court of Cook County, Illinois, until the hearing and disposition of said petition (or motion) for injunction, and ordering this complainant, and the said A. B. Joyner to show cause on November 12, 1907, why an injunction should not issue against their further prosecution of *this* suit, to which order of November 4, 1907, reference is hereby made, and the same, as a part of the record in said Real Estate Company case, is made a part of this petition, and an exhibit hereto.

"3. On November 5, 1907, the Corn Products Manufacturing Company filed in *this* suit (now No. 28,865) in the said Superior Court of Cook



County, its petition in the said State Court for removal of this cause to this court, and on the same date gave notice to the said A. B. Joyner, as the solicitor for your complainant in said cause (now No. 28,865) that on Wednesday, November 6, 1907, at the hour of 10 o'clock A. M., the said petition for removal would be presented before his Honor, Judge Ball, then and still one of the judges of the said Superior Court, in chancery sitting, which said petition for removal and said notice now appear of record in *this* cause (now No. 28,865), and the same are hereby referred to and made a part of this petition, and exhibits hereto.

"4. *Instead of waiting, however, for the said Judge Ball to pass upon the said petition for removal, the said Corn Products Manufacturing Company, without notice to and without the knowledge of this complainant, and without notice to and without the knowledge of any solicitor or agent of this complainant, appeared before this court on November 6, 1907, and obtained an order granting leave to the said Corn Products Manufacturing Company to file in this court a transcript of the record of the said Superior Court of Cook County in this cause, and staying the further prosecution thereof in the said State Court, and enjoining this complainant, George F. Harding, his agents, representatives, counsel, solicitors and attorneys, from proceeding further with the prosecution of said cause in the said Superior Court, until the further order of this court, to which order of November 6, 1907, reference is hereby made and the same is hereby made a part of this petition, and an exhibit hereto.*

"5. And on the said date, November 6, 1907, said Corn Products Manufacturing Company also filed in this cause in this court, *without leave of court, and without notice to, and without the knowledge of this complainant, or any*

*agent, or attorney, or solicitor of this complainant*, a certain so-called supplement to its said removal petition, said so-called supplement having attached thereto the affidavit of G. W. Powers, purporting to be sworn to by said Powers on November 6, 1907, to which supplement, with said affidavit, reference is hereby made and the same is hereby made a part of this petition and an exhibit hereto.

*"6. As soon as this complainant, George F. Harding, learned of the said entry of the said order of November 6, 1907, in this cause, THIS COMPLAINANT APPLIED TO THIS COURT FOR LEAVE TO PRESENT HIS MOTION TO REMAND THIS CAUSE TO SAID SUPERIOR COURT, and, on December 23, 1907, this complainant filed herein his motion in writing to remand this cause to said Superior Court, AND PRESENTED THE SAME TO THIS COURT, BEFORE JUDGE LANDIS, ON DECEMBER 26, 1907, AND THEN ASKED THAT THE SAID MOTION TO REMAND FILED IN THIS CAUSE BE GRANTED BY THIS COURT, but the said Judge thereupon refused to grant the same, and then stated that the same would not be allowed, and, THEREUPON, at the instance of said Mayer, as solicitor for defendant in said cause, entered an injunction in that suit, numbered 28,695, under date of December 13, 1907, RESTRAINING THIS COMPLAINANT FROM FURTHER PROCEEDING WITH HIS SAID MOTION TO REMAND THIS CAUSE, and from taking any other steps whatsoever in this cause, the said proceedings of November and December, 1907, being in the said suit No. 28,695, as shown by the record of this court in that cause, including the certificate of evidence signed by said Judge Landis, and filed in that cause on April 30, 1908, to all of which record, including said certificate of evidence, and including the petition for and allowance of appeal from said order entered under date of December 13, 1907, reference is hereby made, and the same is made a part of this petition, and pre-*

sented herewith as an exhibit to this petition, and your petitioner prays that the same may be made a part of the record in this cause, No. 28,865, in order that all the facts touching his said motion to remand this cause to said Superior Court may be thus made a part of the record in this cause, numbered 28,865. And on the 29th day of June, 1907, the mandate of the United States Court of Appeals for the Seventh Circuit, showing, among other things, the reversal of said order of date December 13, 1907, was filed in this court in said cause No. 28,695, to which mandate reference is hereby made and the same is made a part of this petition, and an exhibit hereto, so that now for the first time this complainant is free to move in this cause for remand of the same to said Superior Court.

"7. *By way of further precaution, and to prevent misunderstanding, this complainant now requests and moves this court to now enter an order herein upon his said filed motion to remand, BASED UPON THE SAID PROCEEDINGS AND RECORD OF NOVEMBER AND DECEMBER, 1907, and upon the said petition for removal, as it THEN stood in this cause, WHEN THE SAID MOTION TO REMAND WAS FILED HEREIN, and when the said motion to remand was then refused even a hearing, and thus denied, and enjoined by this court, and held and declared by this court to be disposed of and covered and enjoined by the said injunction in the said Real Estate Company's suit, \* \* \* which injunction has now been reversed by the United States Circuit Court of Appeals, of the Seventh Circuit, as shown by the said mandate of that court this day filed in this court in the said Real Estate Company's suit, to which mandate reference is hereby again made, and the same is made a part of this petition, it thus thereby appearing, and this petitioner, said George F. Harding, also states, that this present date is*

*the first day on which any steps could be taken in this present suit by this complainant since the entry of the said order of November 4, 1907, the said injunction order of date December 13, 1907, by or pursuant to said mandate being on this date for the first time vacated and set aside, and the said suit of said Real Estate Company, and said petition (or motion) of November 4, 1907, having been THIS day moved by said Real Estate Company to be dismissed by order of this court, pursuant to said mandate, to which order of dismissal WHEN ENTERED PURSUANT TO SAID MOTION THIS DAY MADE, reference is hereby made and the same is hereby made a part of this petition, as an exhibit hereto.*

*“Wherefore, this complainant represents and shows to this court that this complainant is now entitled to have entered of record herein an order remanding this cause to said Superior Court, on his said motion to remand filed herein on December 23, 1907, THE SAME ORDER AS THIS COMPLAINANT WAS ENTITLED TO ON DECEMBER 26, 1907, when he moved this court to grant the same, and the same was then wrongfully and unlawfully refused and enjoined by said order of December 26, 1907, entered under date of December 13, 1907, this cause having been surreptitiously and wrongfully and unlawfully removed to this court and thus held in this court as above set forth, and this complainant now prays that such order remanding this cause to said Superior Court be now entered herein, accordingly; and TO THE END THAT ALL OBSTACLES THAT MAY BE OR BE CLAIMED TO BE IN THE WAY OF SUCH REMAND may be removed, this complainant further requests and moves the court to wholly disregard said supplement filed herein on November 6, 1907, and, if need be, that the same be stricken from the files, and that the petition filed herein on April 16, 1909, for leave to amend said removal petition herein, be disre-*

garded by this court, and, if need be, stricken from the files, *and that the order of this court permitting amendment to said removal petition herein be disregarded by this court, and, if need be, vacated and set aside*, and that the amendment filed herein on June 14, 1909, to said removal petition be disregarded by this court, and, if need be, stricken from the files, and this complainant respectfully represents and states that the averments in said amendment filed herein on June 14, 1909, that this complainant was, on October 19, 1907, or since that date, a citizen of Illinois, and a resident of the City of Chicago, in said state, are entirely untrue, and, in fact and in truth, this complainant, George F. Harding, was, on October 19, 1907, and continually since has been a resident and citizen of the State of California and of no other state or country; and this complainant further respectfully shows, *while protesting and objecting, as above stated*, against the efforts of the Corn Products Manufacturing Company herein, to amend its said removal petition herein, *and protesting and objecting that the allowance and filing of the said amendment were and are contrary to all precedent and the practice of this court, and in violation of the law*, and that said amendment is a mere attempt to defeat the restrictions upon the jurisdiction of this court, imposed by the Acts of Congress of 1887-1888, as declared and enforced by the United States Supreme Court in the case of *Ex parte Wisner*, and a mere repetition of the same effort attempted by said injunction above set forth, *and this complainant having denied and still denying the said allegations of citizenship made in said amendment*, as elsewhere more fully shown of record in this case, respectfully *prays that this court will PROMPTLY pass upon this complainant's said motion to remand this case UPON THE BASIS OF THE SAID WRITTEN MOTION FILED HEREIN ON DECEMBER 23,*

1907; and this complainant further prays that *in the event* this court shall deny the said motion to remand, that your petitioner be *permitted* to join issue upon the said averments of citizenship in the said amendment to said removal petition, *without waiving his rights and contentions set forth in this petition*, and that a prompt hearing be had upon said issue of fact, TO THE END THAT A PETITION FOR MANDAMUS *may be presented promptly by this complainant to the Supreme Court of the United States, to compel a remand of this case to the State Court*, at the earliest possible moment, to-wit, at the beginning of the October term, A. D. 1909, of said Supreme Court, SO THAT ONE AND THE SAME PETITION FOR MANDAMUS MAY PRESENT COMPLETELY TO THAT COURT THE ENTIRE ACTION OF THIS COURT IN THE PREMISES,

\* \* \* \* \* ALL TO THE END THAT THERE MAY BE A SPEEDY ADMINISTRATION OF JUSTICE IN THIS CASE, and technical obstacles be avoided, and *possible injustice prevented that might arise out of or result from a partial submission in such petition for mandamus of the rights of this complainant to have this cause remanded to the said Superior Court*, where this complainant claims he has a constitutional right, under the law, to have this case heard, of which right he has been so long deprived by said injunction of this court and by the action of the defendants herein; AND YOUR PETITIONER PRAYS THAT THE RIGHT OF THIS COMPLAINANT TO HAVE HIS SAID MOTION TO REMAND THIS CAUSE TO SAID SUPERIOR COURT ALLOWED UPON THE RECORD HEREIN, *as it existed at the time said motion to remand was filed herein, and presented to this court*, MAY NOW BE RECOGNIZED AND ENFORCED, AND THAT THE RIGHT OF THIS COMPLAINANT TO PROCEED WITH THE PROSECUTION OF THIS SUIT IN SAID STATE COURT MAY BE NO LONGER WRONGFULLY AND UNLAWFULLY DEFEATED AND DELAYED AS HAS BEEN TO THIS TIME

WRONGFULLY AND UNLAWFULLY DONE, *as above set forth*; AND THIS PETITION IS PRESENTED WITHOUT WAIVING THE RIGHT OF THIS COMPLAINANT TO FORMALLY JOIN ISSUE ON SAID REMOVAL PETITION AS AMENDED HEREIN, as aforesaid, *and have such issue tried*, IN THE EVENT THAT THE PRAYER OF THIS PETITIONER BE DENIED BY THIS COURT; AND YOUR PETITIONER WILL EVER PRAY, ETC.

“GEORGE F. HARDING,  
*Petitioner.*”

MANDATE OBEYED AND SAID PETITION TO REMAND AGAIN PRESENTED AND TAKEN UNDER ADVISEMENT.

FORTY-SECOND: On July 1, 1909, an order was entered in said Real Estate Company's suit by said Judge Sanborn, dismissing the bill of complaint in that case and dismissing said petition of November 4, 1907, in obedience to said mandate. A copy of said order of July 1, 1909, marked “Exhibit J,” is hereto annexed. And thereupon your petitioner again presented to said Judge his said petition dated June 29, 1909, and said Judge thereupon took said petition under advisement.

Said order entered *under date of July 1, 1909*, is entitled in the said Real Estate Company's suit, and refers to said MANDATE as “having *this day* been filed herein”; said Mandate, however, was filed in the said Circuit Court on June 29, 1909 (as elsewhere shown in this petition), and on *that* date, June 29, 1909, said order entered on July 1, 1909, obeying said Mandate, was actually prepared and put into the hands of the court, and taken under advisement by the court, and the same was entered on July 1, 1909, exactly as thus prepared and submitted to the

court on June 29, 1909, and the said petition dated June 29, 1909, and presented on June 30, 1909, referred to such order so *prepared and submitted* on that date in said Real Estate Company's case, and made the same, *when entered*, an exhibit to said petition.

ORDERS OF JULY 9, 1909, DENYING LEAVE TO FILE SAID PETITION PRESENTED JUNE 30TH AND DENYING MOTION TO REMAND AS PRESENTED IN SAID PETITION.

FORTY-THIRD: On July 9, 1909, said Judge Sanborn entered two orders in said cause, in one of which he denied leave to file said petition presented on June 30, 1909 (and July 1, 1909), and in the other of which he overruled the motion of your petitioner to remand, filed December 23, 1907, as set forth and presented in and by said petition presented as aforesaid on June 30, 1909. Copies of each of said orders of July 9, 1909, marked, respectively, "Exhibit K" and "Exhibit L," are hereto annexed.

Your petitioner here quotes from the said order first entered on July 9, 1909, said "Exhibit K," as follows:

*"Complainant having appeared specially herein, and for the purpose only of moving to remand this suit to the state court on his motion to remand filed herein December 23, 1907, AND FOR THE SAME ORDER WHICH HE CLAIMS HE WAS ENTITLED TO HAVE MADE DECEMBER 26, 1907, when he moved the court to grant said motion of December 23, 1907, William J. Ammen appearing*



specially for the plaintiff, and Mayer, Mayer & Austrian for defendants.

\* \* \* \* \*

“AND IT FURTHER APPEARING TO THE COURT THAT BY REASON OF THE MAKING OF SAID INJUNCTION COMPLAINANT HAD NO OPPORTUNITY TO HAVE SAID MOTION TO REMAND HEARD UNTIL JUNE 30, 1909, WHEN THE MANDATE OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT WAS FILED IN SAID CASE NO. 28,695, DIRECTING THE REVERSAL OF THE SAID INJUNCTION ORDER OF DECEMBER 13, 1907, SO ENTERED DECEMBER 26, 1907.

“Wherefore, *upon the record herein, and the facts herein recited, on motion of counsel FOR DEFENDANTS, it is ordered by the court that the said motion to remand this suit to the state court be, and the same is, hereby denied.*”

NOTE: Upon the entry of said order above quoted from, on July 9, 1909, your petitioner *thereupon* presented and filed in said cause his “Answer,” mentioned in the next paragraph of this petition for Mandamus, and *thereupon* said court entered its *other* order of date July 9, 1909 (Exhibit L to this petition), fixing the time and manner of taking of proof, on both sides, on such issue of citizenship, and at the foot of *that* order *added* its denial of leave to your petitioner to file said petition presented June 30, 1909, but that *addition* should *properly* have been at the end of the said other order of July 9, 1909 (Exhibit K to this petition), as *that* was the order which *in fact* disposed of said petition presented June 30, 1909, as hereinafter fully and clearly shown.

ANSWER ALLEGING AMENDMENT PROCEEDINGS VOID,  
AND DEMANDING REMAND AS IN SAID PETITION OF  
JUNE 30TH, AND DENYING TRUTH OF AMENDMENT,  
AND ASKING SPEEDY HEARING OF SUCH ISSUE TO  
THUS INSURE REMAND, AND CLEAR THE WAY FOR  
PETITION TO SUPREME COURT, IF NEED BE, FOR  
MANDAMUS TO COMPEL REMAND.

FORTY-FOURTH: Thereupon, on July 9, 1909, your petitioner filed in said cause his answer to said removal petition as amended. A true and complete copy of said answer, marked "Exhibit M," is hereto annexed. Said answer was in fact prepared and sworn to by your petitioner on July 1, 1909, but was held back by your petitioner until said court, on the morning of July 9, 1909, denied the prayer of said petition presented on June 30, 1909, and refused even permission to file the same. In said certificate of evidence dated Nov. 19, 1909, said Judge Sanborn certifies that said petition was presented on June 30, 1909, as shown on page 85 of Part I of said "Exhibit A" and, as shown on page 98, he certifies that that was the same petition he denied leave to file on July 9, 1909, in the last sentence of the order above referred to as "Exhibit L" to this petition.

Your petitioner further shows that his said answer filed July 9, 1909, to said removal petition as amended, is entitled in the said suit brought by your petitioner (and removed as aforesaid to the said Circuit Court), and reads as follows:

"Now comes the said complainant, George F. Harding, *appearing specially herein, as heretofore, and protesting and objecting, as in his*

motion to remand filed herein on December 23, 1907, and as in his objections and answer filed herein to the petition or motion to amend the removal petition herein, \* \* \* *that this court is wholly without jurisdiction of or in this cause, or over or against this complainant, and still insisting that this court has not and never had any jurisdiction of or in this cause, or over or against this complainant in said cause, or any authority or power therein except to remand said cause to the state court, and insisting that the said cause has been improperly and unlawfully removed from the state court to this court, and improperly and unlawfully held in this court up to the present time, and saving, and reserving, and preserving all and every of his objections and exceptions to the several orders of this court in this cause, and every of them, and every part thereof, and insisting that the same, including, particularly, the order permitting the amendment to the removal petition in said cause, were and are, respectively, WITHOUT POWER OR AUTHORITY OR JURISDICTION on the part of this court, and, THEREFORE, wholly null and void, and insisting and protesting that the said amendment filed herein, on June 14, 1909, to said removal petition, was and is unauthorized and improper, and that this court has no jurisdiction of or in this cause, or of or over this complainant, notwithstanding the filing of the said amendment by leave of court herein, and, particularly, saving and reserving and preserving to this complainant his objections and contentions set forth in his petition presented to this court in this cause on June 30, 1909, and insisting that the prayer thereof should THEN have been and should now be granted by this court, and insisting further that this court should not have allowed the said petition for leave to amend the removal petition in this cause, and granted such leave at any time, and,*

particularly, before the filing of the mandate of the United States Court of Appeals in the suit in chancery No. 28695, in this court, which mandate was not filed in said cause until June 29, 1909, and had been stayed up to May 19, on motion of appellee therein, *this complainant saving and reserving and preserving all and every of his rights and contentions, aforesaid,* AND TO THE END THAT SUCH PROCEEDINGS MAY BE HAD IN THIS CAUSE AS WILL CLEAR AWAY ALL OBSTACLES AGAINST THIS COMPLAINANT'S APPLYING TO THE SUPREME COURT OF THE UNITED STATES FOR A MANDAMUS TO COMPEL A REMAND OF THIS CAUSE TO THE STATE COURT, for answer to the said petition for removal as amended herein on June 14, 1909, this complainant, George F. Harding, represents and states and shows to the court that it is not true that this complainant, George F. Harding, was, on October 19, 1907, or at any time since that date, a citizen and resident of the State of Illinois, \* \* \* but, on the contrary, \* \* \* this complainant, George F. Harding, was, on October 19, 1907, and continuously since has been and now is a citizen of the State of California, and a resident of the said State of California, and was not on October 19, 1907, and at no time since that date has been, and is not now a citizen or resident of any other state or country than the said State of California.

\* \* \* \* \*

“And this complainant *prays* that there may be a *speedy hearing and decision of such issue of citizenship*, AND A REMAND OF THIS CAUSE TO THE STATE COURT BY THE ORDER OF THIS COURT, AND, PARTICULARLY, THAT SUCH ACTION MAY BE TAKEN AS WILL ENABLE THIS COMPLAINANT TO APPLY PROMPTLY TO THE SUPREME COURT OF THE UNITED STATES, IF NEED BE, FOR A MANDAMUS TO COMPEL A REMAND OF THIS CAUSE TO THE STATE COURT; *and this answer is presented by this*

*complainant, and a trial of the said issue of citizenship requested and demanded by this complainant, WITHOUT INTENDING, IN ANY WAY, OR TO ANY EXTENT, TO WAIVE HIS SAID MOTION TO REMAND HERETOFORE FILED HEREIN, OR ANY PART THEREOF, or his rights, by reason of any decision or action of court thereupon, and without intending, in any way, or to any extent, to waive his said petition presented to this court in this cause on June 30, 1909, and SOLELY IN ORDER THAT THIS COMPLAINANT MAY SPEEDILY OBTAIN A REMAND OF THIS CAUSE TO THE STATE COURT, THIS COURT HAVING HERETOFORE REFUSED A HEARING THEREOF, and having even enjoined the bringing on of the same to be heard, and the mandate showing a reversal of such injunction having been filed, as aforesaid, on June 29, 1909, thus leaving this complainant free, for the first time, to move for a remand of this cause to the state court, and this answer is presented without waiving, or intending to waive, any of the protests or objections of this complainant against the said amendment to the said removal petition by leave of this court, GRANTED IN FACE OF THE SAID INJUNCTION THEN IN FULL FORCE, and against the other objections and protests urged by or in behalf of this complainant against the granting of the same; and this complainant will ever pray, etc."*

FORTY-FIFTH: On October 30, 1909, said Judge Sanborn entered an order in said cause, in relating to the taking of testimony on said issue of citizenship, a true and complete copy of which order, marked "Exhibit N," is hereto annexed.

FORTY-SIXTH: On January 26, 1910, your petitioner filed in said cause a certain written motion entitled therein, reading as follows:

"Now comes the complainant in the above entitled cause and moves the court for an order

granting leave to said complainant to take further testimony before a Notary Public, in Chicago, Illinois, upon the issue of his citizenship in said cause, this motion being made by complainant, *while objecting and protesting, as heretofore, against the authority of the court to allow the amendment heretofore allowed to the removal petition in said cause, under and pursuant to which amendment said issue of citizenship has been made, as stated in the answer of said complainant thereto, the contention of said complainant still being that the said order allowing the said amendment, and all proceedings thereunder and pursuant thereto, ARE VOID, AND WITHOUT AUTHORITY OF LAW, these objections being here restated in order to avoid any waiver or claim of waiver upon the part of said complainant, in regard thereto.*"

ADDITIONAL MOTION FILED JANUARY 26, 1910.

FORTY-SEVENTH: On the same day, January 26, 1910, your petitioner filed in said cause a certain other motion in writing therein, together with the affidavits of your petitioner and William J. Ammen bearing that date and sworn to on that date and attached to and filed with said motion. A true and complete copy of the said motion so filed on January 26, 1910, together with the said affidavits thereto attached and filed therewith, is hereto annexed, marked "Exhibit O." Said motion so filed on January 26, 1910, omitting title and signatures of solicitors for complainant, reads as follows:

"Now comes the complainant in the above entitled cause and moves the court to vacate and set aside the order entered in this cause on July 9, 1909, denying, *or purporting to deny*, a motion *alleged in said order* to have been then made by said complainant to remand this cause to the state court, *the said complainant never having*

*made, on that date, the said alleged motion denied, by said order, and in support of said [this] motion said complainant submits his affidavit herewith entitled in said cause together with other proof to be submitted on the hearing of this motion."*

And your petitioner here quotes from his said affidavit, attached to and filed with his said motion of January 26, 1910, last above set forth, as follows:

"George F. Harding, being first duly sworn, states on his oath that he is the complainant in the above entitled cause, and *that he never made on July 9, 1909, any motion to remand this cause to the state court, as recited in the order of July 9, 1909, and purporting to be denied by that order, but, on the contrary, this complainant then expressly refused and declined to make or adopt any such motion.*

"Affiant further states that, on June 30, 1909, he presented to this court his petition entitled in said cause, duly sworn to by him on June 29, 1909, and then offered the said sworn petition, together with other evidence, in support of his motion and prayer set forth in said petition, which said petition is presented with this affidavit, and the same is hereby referred to and made a part hereof, and this affiant then moved the court for leave to file the said petition in said cause, *and that the prayer thereof in relation to the remanding of said cause to the state court be granted* UPON THE GROUNDS AND REASONS AND BASIS SET FORTH IN SAID PETITION; to all of which Levy Mayer, as solicitor for defendant in said cause, objected. Whereupon the court announced from the bench that said petition would be examined by the court and disposed of by an order of court to be entered on a later date in said cause. And thereupon the said petition was delivered to the Judge of said court, the

Honorable Arthur L. Sanborn, for the purposes aforesaid.

"Affiant further states that on several occasions between June 30, 1909, and July 9, 1909, the matter of the said petition was again called to the attention of the said court, by this affiant, in open court, the said Levy Mayer being present as solicitor for defendant before the said Judge, on every of such occasions; and, on July 9, 1909, in open court, the said Levy Mayer being then present again as solicitor for defendant in said cause, the said petition was again presented to said Judge, and this affiant then again moved for leave to file the same, and that the said prayer thereof be granted by the court, and the court thereupon denied to said complainant leave to file the said petition, as recited in another order of July 9, 1909, relating to the taking of depositions in said cause.

"This affiant further states that the said petition of this affiant was thus disposed of by the court on July 9, 1909, subject only to the right of review on a petition for mandamus by said complainant, or otherwise; but, notwithstanding this fact, the said court thereupon, of its own motion, and against the objection of this complainant, entered its said order of July 9, 1909, denying or *purporting* to deny, an *alleged* motion then made by complainant to remand said cause to the state court, but, in truth and in fact, this complainant did not make or present any such motion, and this complainant then and there objected and protested that *the only motion made by this complainant was that contained and set forth* in said petition, and said order of July 9, 1909, reciting said alleged motion to remand, was then made and entered by the court, against the objections of this affiant, then fully stated to the court by this affiant, namely:

\* \* \* \* \*



“Affiant further states that on April 13, 1909, said Mayer, as solicitor for appellee in the said Court of Appeals, moved that court to modify its judgment and in support of such motion filed therein his printed brief and suggestions, a copy of which is presented to the court with this affidavit and the same is hereby made an exhibit hereto and a part hereof, half of the said brief, namely, pages 12-24, being given to the discussion of the contention that the said Court of Appeals in its opinion and judgment in said cause had acted upon a mistake as to the date of the actual entry of the said injunction order, which motion to modify said judgment was denied by the said Court of Appeals on April 21, 1909, as already shown by the proof before this court in this cause. Further affiant saith not.”

Your petitioner further shows that said affidavit of the said Ammen stated that the said statements made in the said affidavit of said Harding “are true of this affiant’s own knowledge in so far as the same relate to the proceedings of June and July, 1909, in said cause.” Your petitioner further shows that the said affidavits made by your petitioner and said Ammen, and the statements made therein, and the matters and things therein contained, were and are true, as therein stated.

#### ORDER OF FEBRUARY 10, 1910.

FORTY-EIGHTH: Your petitioner further shows that said two motions of January 26, 1910, were, after due notice to said Mayer, presented to the said Judge Sanborn, on that date, together with the affidavits of said Harding and said Ammen attached to and filed with one of said motions, and thereupon both of said motions were taken under advisement by the said Judge Sanborn; and, on February 10,

1910, the same were disposed of by the said Judge by his order of that date, a true and complete copy of which order, marked "Exhibit P," is hereto annexed, and your petitioner here quotes from the same, as follows:

"The motions of the complainant to set aside the order entered herein July 9, 1909, denying a motion to remand and to permit the complainant to take certain evidence on the issue of citizenship by deposition, in the State of Illinois, instead of having the same taken at the hearing as heretofore ordered, came on to be heard *on the 26th day of January, 1910*, upon the record herein and the arguments of counsel, and the motion to set aside the order of July 9th was further heard on the second day of February, 1910.

"It is thereupon ordered that the motion of complainant to take further testimony upon the issues of citizenship, by deposition, or before a notary public in Chicago, Illinois, be, and the same is hereby denied.

"AND IT APPEARING TO THE COURT THAT THE APPLICATION TO REMAND OF JUNE 30, 1909, RECITED IN AND DENIED BY THE ORDER OF JULY 9, 1909, WAS THE ONE MADE IN THE PETITION OF JUNE 29, 1909, *contained in the certificate of evidence, dated November 19, 1909*, BUT WHICH PETITION WAS NOT PERMITTED TO BE FILED.

"*And it further appearing that all the steps taken by complainant up to and including the 26th day of December, 1907, in respect to remanding this suit are fully stated in the certificate of evidence made by Kenesaw M. Landis, a Judge of this court, in the suit of Chicago Real Estate Loan & Trust Company against Corn Products Refining Company and others, WHICH IS PART OF THE AFORESAID CERTIFICATE OF EVIDENCE IN THIS SUIT.*

"It is thereupon ORDERED upon the record herein, that the motion of January 11, 1910, no-

ticed for January 14, 1910, and heard the 26th of January, 1910, to set aside the order of July 9, 1909, is denied *upon the grounds above stated*.

"And it is further ordered that the additional motion of complainant to vacate and set aside said order of July 9, 1909, together with the affidavit of George F. Harding, accompanying the same, purporting to have been filed January 26, 1910, are struck from the files because entirely unnecessary to preserve the rights and interests of the complainant herein."

FORTY-NINTH: Your petitioner here quotes from the said certificate of evidence signed by Judge Sanborn under date of November 19, 1909, in said cause, the following, as shown on pages 85, 92 and 98 of Part I of said "Exhibit A," namely:

"The court further certifies [page 85] that the following petition was presented by complainant on June 30, 1909, but was not permitted to be filed."

Then follows said petition as shown on pages 86-92 of Part I of said "Exhibit A," and thereupon the certificate of evidence recites, on page 92, as follows:

"Complainant offered in evidence *in support of said petition*, the evidence already appearing in this certificate of evidence, and the original mandate of the Court of Appeals referred to in said petition, which mandate is as follows:"

Then follows on pages 92-98 said mandate dated June 28, 1909, and filed in the Real Estate Company's suit on June 29, 1909. Thereupon the Certificate of Evidence recites (on page 98) that "the concluding sentence of the order of July 9, 1909,

fixing term probatory has reference to the foregoing petition," and that "the foregoing was all the evidence," etc.

OPINION FILED OCTOBER 25, 1910.

FIFTIETH: The hearing on said issue of citizenship closed on July 18, 1910; and, on October 25, 1910, said Judge Sanborn filed in said cause his opinion deciding such issue against your petitioner, a true and complete copy of which opinion, marked "Exhibit Q," is hereto annexed. Your petitioner quotes the last sentence thereof as follows:

"An order should be entered finding complainant to have been a citizen of Illinois when the bill was filed in the state court, October 19, 1907, and *denying the motion to remand.*"

FIFTY-FIRST: In October 29, 1910, said Levy Mayer served upon said Ammen, as solicitor for your petitioner in said cause, a notice entitled in said cause, stating that on Nov. 2, 1910, he, said Mayer, would move the court before said Judge Sanborn, "that an order be spread of record in the above entitled case, based upon the entry in the minute book of the Clerk of said court, entered on October 25, 1910, and on the opinion of Judge A. L. Sanborn in the above entitled cause, filed herein on October 25, 1910, a copy of which is herewith served upon you. A true and complete copy of the said notice, marked "Exhibit R," is hereto annexed.

FIFTY-SECOND: Pursuant to said notice the said Mayer and said Ammen appeared before said Judge Sanborn, on November 2, 1910; and thereupon the said Judge, *against the objections of said Ammen as solicitor for your petitioner*, entered an order in

said cause, bearing date October 25, 1910, and entered as of that date pursuant to said opinion filed on that date, and entitled in said cause, a true and complete copy of which order, marked "Exhibit S," is hereto annexed. Your petitioner here quotes said order (omitting title) as follows:

"There having heretofore come on to be heard the removal petition, *as amended*, of the defendant Corn Products Manufacturing Company, the same having been amended by leave of court granted on May 15, 1909, and upon the answer of said complainant, George F. Harding, to said removal petition, *as amended*, which answer was heretofore filed herein on July 9, 1909, and which answer prays for a trial upon the issue of citizenship raised by said answer, and also prays that there may be a remand of this cause to the state court, and the court having heretofore heard and considered the evidence and taken the matter under advisement, and being now fully advised in the premises, and the parties being now in court by their respective solicitors, the court finds that said George F. Harding was, on October 19, 1907 (the date when the original bill of complaint herein was filed by him in the Superior Court of Cook County, Illinois), and continuously since has been, and now is, a citizen of the State of Illinois and a resident of the City of Chicago, in said state; and

"The court further finds that said George F. Harding was not, on October 19, 1907, and at no time since has been, and is not now, a citizen or resident of the State of California; and

"The court further finds that said complainant, George F. Harding, is not entitled to have this cause remanded to the state court.

"WHEREFORE, the premises considered, it is hereby ORDERED, ADJUDGED AND DECREED that the prayer and motion of SAID ANSWER of George F. Harding, that this cause be remanded to the

*Superior Court of Cook County, Illinois, be and the same is hereby overruled and denied; and*

"It is hereby FURTHER ORDERED, ADJUDGED AND DECREED that the said Corn Products Manufacturing Company is entitled to and shall be paid by said George F. Harding all of the costs incurred by said Corn Products Manufacturing Company in the matter of said hearing upon said removal petition, as amended, and said answer thereto, said costs to be taxed by the Clerk of this court; and that execution issue therefor."

FIFTY-THIRD: No certificate of evidence has yet been filed or presented or prepared in relation to the hearing and decision of the said issue of citizenship, and your petitioner therefore asks leave to here quote from the shorthand reporter's transcript of the proceedings before the said Judge Sanborn, on November 2, 1910, for the purpose of showing your petitioner's objections then renewed to the jurisdiction of said court, and what was then said in open court by said Judge and by said solicitors therein, a true and complete copy of which reporter's transcript is hereto annexed, marked "Exhibit T," and your petitioner quotes therefrom, as follows:

FIFTY-FOURTH: Your petitioner further shows that he is informed and advised by counsel and believes that the said Judge Arthur L. Sanborn and said Circuit Court for the Northern District of Illinois, Eastern Division, and each of them, were and are wholly *without jurisdiction* in the said suit brought by your petitioner in said Superior Court of Cook County, Illinois, and have been and still are *wholly without jurisdiction therein* EXCEPT TO REMAND SAID CAUSE TO THE SAID STATE COURT; and particularly, that *the allowance of the said amendment*

*to the said removal petition by said Circuit Court, AND ALL SUBSEQUENT ACTION THEREUNDER, OR BY VIRTUE THEREOF, was and is WHOLLY NULL AND VOID BY REASON OF LACK OF JURISDICTION AND LACK OF POWER upon the part of said Circuit Court; and that said Circuit Court should be required to remand said cause to said state court, and, also, if need be, required to vacate and set aside all orders entered by said Circuit Court in said cause* STANDING IN THE WAY OF SUCH REMAND, if any such orders there be, *and required and commanded to desist from any and all further action in said cause under claim of jurisdiction therein, EXCEPT TO REMAND THE SAME TO SAID STATE COURT.*

WHEREFORE your petitioner prays that an order and rule be made and issued by this Honorable Court directing the said Honorable Arthur L. Sanborn, and directing the said United States Circuit Court of the Northern District of Illinois, Eastern Division, to show cause why a writ of mandamus should not issue prohibiting said Judge, and said court, from assuming or exercising any jurisdiction in the said suit brought by your petitioner, *except to remand the same to said state court*, and to show cause why said Judge, and said Circuit Court, should not be compelled by a writ of mandamus from this Honorable Court to remand said cause to said state court, and your petitioner prays for such other and further writs and relief as to this Honorable Court may seem just and meet, and your petitioner will ever pray, etc.

WILLIAM J. AMMEN,  
*Attorney for Petitioner.*

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

GEORGE F. HARDING, being first duly sworn, states on his oath that he is the petitioner above named, and has read the foregoing petition, together with the exhibits therein referred to and made a part thereof, and that the said petition and the matters therein stated are true as therein stated of his own knowledge, except as to those matters stated therein to be upon his information and belief, and as to those matters he believes the same to be true.

Further affiant saith not.

Dated this 8th day of December, A. D. 1910.

GEORGE F. HARDING.

Subscribed and sworn to before me  
this 8th day of December, A. D. 1910.

(Seal) ALICE WILLNER,

*Notary Public in and for Cook  
County, Illinois.*





## EXHIBIT B.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.  
For the Seventh Circuit.

October Term, A. D., 1908.

George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen,	} No. 1497.
<i>Appellants,</i>	
<i>vs.</i>	
Corn Products Refining Company,	} No. 1497.
<i>Appellee.</i>	

Now comes said appellee, Corn Products Refining Company, and respectfully moves this Honorable Court to modify the judgment of this Honorable Court entered herein on January 19, 1909, by striking out of said judgment that part thereof WHICH REMANDS SAID CAUSE "to the said Circuit Court with direction to dismiss the bill of the Real Estate Company in conformity with one or the other motions filed therefor," and in support of this motion, said appellee files herewith and in support thereof, a certificate of Hon. H. S. Stoddard, Clerk of the United States Circuit Court for the Northern District of Illinois, Eastern Division, in which certificate said clerk transcribes and certifies to the accuracy of a certain minute, as the same appears on the original minute book of said Circuit Court *under date of December 13, 1907*; and in support of this motion, said appellee submits herewith the following suggestions.

Respectfully submitted,

LEVY MAYER,

*Attorney for said Corn Products  
Refining Co., Appellee.*

## EXHIBIT C.

PETITION FILED APRIL 16, 1909, FOR LEAVE TO AMEND  
REMOVAL PETITION.

UNITED STATES OF AMERICA, }  
NORTHERN DISTRICT OF ILLINOIS, } ss.  
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,  
In and for the Northern District of Illinois,  
Eastern Division Thereof.

George F. Harding,  
*Complainant,*  
*vs.*

Standard Oil Company of New Jersey,  
Corn Products Company, Corn Prod-  
ucts Refining Company, Corn Prod-  
ucts Manufacturing Company, Con-  
rad H. Matthiessen, Charles L. Glass,  
William W. Heaton, Norman B.  
Ream, William J. Calhoun, Joy Mor-  
ton, Benjamin Graham, T. B. Wag-  
ner, H. G. Herbert, Thomas P.  
Kingsford, William C. Sherwood, W.  
H. Nichols, Edward T. Bedford, and  
E. P. Wemple,  
*Defendants.*

No. 28,865.

*To the Honorable Judges of said Court:*

Your petitioner, Corn Products Manufacturing Company, respectfully shows unto your Honors the following:

That on November 6, 1907, leave was given by this court to file, and there was on said date filed herein pursuant to said leave, a transcript of the

record of the Superior Court of Cook County, Illinois, in the case of *George E. Harding v. Standard Oil Company et al.*, being Case No. 263,565 in said Superior Court of Cook County, and which case is the same and identical case as that specified in the title and caption to this petition, and said case is now pending in this court;

That your petitioner, on November 5, 1907, filed in said Superior Court of Cook County, in said case while the same was then therein pending, a petition to remove said cause into this court, as appears from the record herein; that in said petition your petitioner set forth, among other things, the following:

“That at the time of the commencement of this suit, the said complainant, George F. Harding, was and continuously since has been and now is a resident and citizen of the State of California, and a citizen of no other state or country.”

That said George F. Harding, as will appear from the record herein, filed an original bill of complaint in said cause in said Superior Court of Cook County on October 19, 1907.

That six days thereafter, on October 25, 1907, said George F. Harding filed in said cause in said Superior Court, as will appear from the record herein, an amended bill of complaint; that in said original bill of complaint and said amended bill of complaint, as appears from the record herein, said George F. Harding, in the opening of both said original and amended bills of complaint, described

himself and used the following language for that purpose:

“Your orator, George F. Harding, a resident and citizen of the State of California, humbly complaining, respectfully represents unto your Honors.”

That relying upon said George F. Harding's own statement as to his said residence and citizenship, as aforesaid, your petitioner in its said petition for removal, used, followed and adopted the said statement so made by said George F. Harding in his original and amended bills of complaint, and your petitioner therefore, in its said petition for removal used the language above quoted to the effect

“that at the time of the commencement of this suit the said complainant, George F. Harding, was and continuously since has been and now is a resident and citizen of California and a citizen of no other state or country.”

Your petitioner at the time of preparing, signing, verifying and filing said petition for removal, and continuously since, except as hereinafter otherwise stated, relied upon and believed the said statement of said George F. Harding as to his said residence and citizenship.

That on or about March 15, 1909, your petitioner became doubtful of the truth of said allegation of said George F. Harding as to his said residence and citizenship, and thereupon at once started an exhaustive inquiry and investigation, both in California and in Illinois, as to the truth of said allegation of said George F. Harding as to his said residence and citizenship; that in order to make such

investigation your petitioner employed careful and reliable persons to make such investigation; that one of the persons so investigating in California as to the residence and citizenship of said George F. Harding returned from California on April 12, 1909; that the investigation made in the State of Illinois as to the residence and citizenship of said George F. Harding was not concluded until April 14, 1909.

Your petitioner further states that since it began its investigation as aforesaid, and only since said date, did it acquire any knowledge as to the falsity of said statement of said George F. Harding so made in his said original and amended bills of complaint, to the effect that he was or is a resident or citizen of the State of California.

Your petitioner further states that its said statement in its said petition for removal, and the information upon which said statement was founded, as to the said residence and citizenship of said George F. Harding, were based upon and came absolutely and exclusively from the said statement so contained in said George F. Harding's original and amended bills of complaint.

Your petitioner further states that the said statement of said George F. Harding in his said original and amended bills of complaint contained, as to his residence in and citizenship of the State of California, was, on October 19th, 1907, at the time said statement was made in said original bill, and also on October 25, 1907, at the time said statement was made in said amended bill, and continuously since October 19, 1907, was and has been and is false.

That your petitioner did not discover the falsity of said statement until on or about April 12, 1909, several weeks after it started said investigation.

Your petitioner states that on October 19, 1907, and for a long time continuously theretofore and continuously since October 19, 1907, up to and including the present time, the said George F. Harding was, has been and now is a citizen of the State of Illinois, and a resident of the City of Chicago, Illinois, and a citizen and resident of no other city, state or country whatsoever.

Your petitioner further states that since said investigation was started he learned, and now states as facts, that said George F. Harding was born in or about the year 1829; that he studied law in Morimouth, Illinois, and was admitted to the bar of the Supreme Court of Illinois on or about June 20, 1850; that he has practiced law in the State of Illinois since that date, and is now so practicing for himself as a client; that in November, 1855, he married his wife, Adelaide M. Harding, who is still living; that he has lived in the State of Illinois nearly all his life; that since 1862 he has resided in said City of Chicago, and since 1872 at 2536 Indiana avenue in said City of Chicago; that on or about February 3, 1890, his said wife sued said George F. Harding in the Circuit Court of Cook County, Illinois, for separate maintenance, and on or about July 26, 1897, secured a decree therefor, which decree was subsequently affirmed in the Supreme Court of Illinois, on or about January 9, 1899; that said George F. Harding bitterly contested said proceeding, as will appear from the reports of various phases thereof contained in

*Harding v. Harding*, 144 Ill., 588; *Harding v. Harding*, 79 Ill. App., 590; *Harding v. Harding*, 79 Ill. App., 621; *Harding v. Harding*, 180 Ill., 481; *Harding v. Harding*, 180 Ill., 592; *Harding v. Harding*, 205 Ill., 105; that on or about August 31, 1897, or about a month after said decree for separate maintenance was so rendered by said Circuit Court of Cook County against said George F. Harding, he filed a bill in the Superior Court of San Diego County, California, against his said wife, in which bill said Harding sought a divorce from his wife on the alleged ground of desertion; that the manifest purpose and object of said proceeding for a divorce was to prevent the enforcement of said decree for separate maintenance in favor of his said wife, and that he subsequently attempted in the courts of Illinois to set up said decree of divorce as a bar to further payments for separate maintenance; that in said divorce bill said George F. Harding alleged that he was a resident and citizen of the State of California, the laws of California then requiring a prior residence on the part of the complainant seeking a divorce in said state for at least three months, in the county, and one year in the state; that although said divorce bill was filed on August 31, 1897, in said San Diego County Superior Court, the case was not tried until on or about January 14, 1910, and on or about January 31, 1901, the said San Diego court dissolved said marriage, and decreed a divorce in favor of said George F. Harding; that said decree was reversed by the United States Supreme Court in *Harding v. Harding*, 198 U. S., 317, on May 15, 1905, and thereafter the reversing mandate of said



United States Supreme Court was filed in the Supreme Court of California on August 7, 1905, and on February 2, 1906, in said Supreme Court of San Diego County.

Your petitioner states that the said George F. Harding took up a pretended residence in California for the purpose of enabling him to apply for said divorce, and that the subsequent pretense of residence in California on the part of said George F. Harding has been due to the fact that he thertofore, as aforesaid, claimed such residence in his said divorce proceeding; that the reversal by the United States Supreme Court of said divorce decree so rendered by said San Diego Superior Court, forever vacated and annulled all the findings and conclusions of said decree; that in said divorce proceedings said George F. Harding claimed that he had taken up his residence in San Diego, California, on May 15, 1895, or more than five years after his said wife had as aforesaid instituted her said suit for separate maintenance against him in the Circuit Court of said Cook County, and while the same was there pending and being prosecuted against him.

Your petitioner further states that said George F. Harding never registered as a voter and never voted in the State of California; that he never paid any taxes on real or personal property in San Diego; that his name never appeared either in the city or telephone directories therein; that he was never therein for a longer period than a few weeks at a time, and then only at very considerable intervals, and that he has not been in said San Diego since 1902; that during all of the time that said George F.

Harding was in California, and since, he had and now has most, if not all, of his property in the State of Illinois.

Wherefore, your petitioner moves and prays that it may have leave to amend its said petition for removal, by inserting in lieu of the sentence,

“George F. Harding was and continuously since has been and now is a resident and citizen of the State of California, and a citizen of no other state or country.”

the following:

“George F. Harding was, on October 19, 1907, and continuously since has been and now is a citizen of the State of Illinois, and a resident of the City of Chicago in said state, and that he was not, on October 19, 1907, and at no time since has been, and is not now a citizen of any other state or a resident of any other city.”

And your petitioner further moves and prays for leave to further amend said petition by inserting therein the following:

“That this suit is one arising under the Constitution and Laws of the United States and involves a federal question, and that the settlement of said federal question is essential to the determination of said cause.”

And your petition will ever pray, etc.

CORN PRODUCTS MANUFACTURING COMPANY,

By FREDERICK T. FISHER,  
*President.*

J. M. SHEEAN,  
CALHOUN, LYFORD & SHEEAN,  
*Solicitors.*

LEVY MAYER,  
*Of Counsel.*

L

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

Frederick T. Fisher, being first duly sworn, upon oath deposes and says that he is the president and agent in this behalf of said Corn Products Manufacturing Company, the above-named petitioner; that he has read the above and foregoing petition and that he knows the contents thereof; that said petition is true to the best of his knowledge, information and belief; that he makes this affidavit for and on behalf of said Corn Products Manufacturing Company, and has full authority to make the same.

FREDERICK T. FISHER.

Subscribed and sworn to before me, a Notary Public, by said Frederick T. Fisher, this 15th day of April, A. D. 1909.

KATHRYN McDONALD,  
*Notary Public.*

(SEAL)

UNITED STATES OF AMERICA, }  
 NORTHERN DISTRICT OF ILLINOIS, } ss.  
 EASTERN DIVISION THEREOF.

IN THE UNITED STATES CIRCUIT COURT,  
 In and for the Northern District of Illinois,  
 Eastern Division.

George F. Harding,  
*Complainant,*

*vs.*

Standard Oil Company of New Jersey,  
 Corn Products Company, Corn Prod-  
 ucts Refining Company, Corn Prod-  
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 rad H. Mattheissen, Charles L. Glass,  
 William W. Heaton, Norman B.  
 Ream, William J. Calhoun, Joy Mor-  
 ton, Benjamin Graham, T. B. Wag-  
 ner, H. G. Herget, Thomas P.  
 Kingsford, William C. Sherwood, W.  
 H. Nichols, Edward T. Bedford, and  
 E. P. Wemple,  
*et al.*

No. 28,865

*Defendants.*

Now comes said Corn Products Company, Corn Products Refining Company, Conrad H. Mattheissen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, William C. Sherwood, W. H. Nichols, Edward T. Bedford and E. P. Wemple, defendants, jointly and severally, by James M. Sheean, their solicitor, and jointly and severally appear specially, and specially only, for the purpose of uniting, and they hereby severally do unite in the above and fore-

going motion of the Corn Products Manufacturing Company, one of said defendants, and they hereby jointly and severally consent that the prayer of the above and motion, asking for leave to amend the petition for removal filed by said Corn Products Manufacturing Company on November 5, 1907, as shown by the record herein, may be granted in accordance with the said prayer of said motion, and they jointly and severally say that the allegations contained in the above and foregoing motion are true.

CORN PRODUCTS COMPANY,  
CORN PRODUCTS REFINING COMPANY,  
CONRAD H. MATTHEISSEN,  
CHARLES L. GLASS,  
WILLIAM W. HEATON,  
NORMAN B. REAM,  
WILLIAM J. CALHOUN,  
JOY MORTON,  
BENJAMIN GRAHAM,  
T. B. WAGNER,  
H. G. HERGET,  
THOMAS P. KINGSFORD,  
WILLIAM C. SHERWOOD,  
W. H. NICHOLS,  
EDWARD T. BEDFORD and  
E. P. WEMPLE.

By J. M. SHEEAN,  
*Their Solicitor.*

UNITED STATES OF AMERICA,  
NORTHERN DISTRICT OF ILLINOIS, } ss.  
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,  
In and for the Northern District of Illinois,  
Eastern Division.

George F. Harding,  
*Complainant,*  
*vs.*

Standard Oil Company of New Jersey,  
Corn Products Company, Corn Prod-  
ucts Refining Company, Corn Prod-  
ucts Manufacturing Company, Con-  
rad H. Matthiessen, Charles L. Glass,  
William W. Heaton, Norman B.  
Ream, William J. Calhoun, Joy Mor-  
ton, Benjamin Graham, T. B. Wag-  
ner, H. G. Herget, Thomas P.  
Kingsford, William C. Sherwood, W.  
H. Nichols, Edward T. Bedford, and  
E. P. Wemple, } No. 28,865.  
*Defendants.*

Now comes Standard Oil Company, a corpora-  
tion organized and existing under and by virtue of  
the laws of the State of New Jersey, defendant,  
appearing specially and specially only, by its so-  
licitors, Alfred D. Eddy and Robert W. Stewart, and  
for the sole and single purpose of consenting to the  
above and foregoing motion of Corn Products Manu-  
facturing Company, one of said defendants, and ex-  
pressly reserving unto itself the right to make any  
and all objections to the jurisdiction of said United  
States Circuit Court over the person of this defend-

ant, by reason of said defendant not having been served with any process herein; and also reserving unto itself the right to make any and all objections to the jurisdiction of the Superior Court of Cook County, State of Illinois, the court in which said action was first commenced, consents that the prayer of the above and foregoing motion asking for leave to amend the petition for removal, filed by said Corn Products Manufacturing Company on November 5, 1907, as shown by record herein, may be granted in accordance with the prayer of the said motion.

STANDARD OIL COMPANY,  
*A New Jersey Corporation.*

By ALFRED D. EDDY,  
ROBERT W. STEWART,  
*Its Solicitors.*

UNITED STATES OF AMERICA,  
NORTHERN DISTRICT OF ILLINOIS, } ss.  
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,  
In and for the Northern District of Illinois,  
Eastern Division Thereof.

George F. Harding,  
*Complainant,*

*vs.*

Standard Oil Company of New Jersey,  
Corn Products Company, Corn Products  
Refining Company, Corn Products  
Manufacturing Company, Conrad  
H. Matthiessen, Charles L. Glass,  
William W. Heaton, Norman B.  
Ream, William J. Calhoun, Joy Morton,  
Benjamin Graham, T. B. Wagner,  
H. G. Herget, Thomas P.  
Kingsford, William C. Sherwood, W.  
H. Nichols, Edward T. Bedford, and  
E. P. Wemple,

No. 28,865.

*Defendants.*

Levy Mayer, being first duly sworn, upon oath deposes and says as follows:

1. I now am and on October 19, 1907, was, and for many years theretofore had been a member of the bar of this court, and of the United States Supreme Court. I was, on October 19, 1907, and ever since have been, and now am, of counsel in the above entitled cause for said Corn Products Company, Corn Products Refining Company and Corn Products Manufacturing Company, three of the defendants to the bill of complaint herein. On November 4, 1907,



and continuously since, Mr. James M. Sheean, of the firm of Messrs. Calhoun, Lyford & Sheean, was and still is one of the solicitors for said three named defendants.

2. On November 4, or 5, 1907, I prepared and caused to be filed, as prepared by me, the petition for removal filed herein by said Corn Products Manufacturing Company; that said petition so on file is the same petition, in manner and form as it was prepared by me; that the following statement in said petition contained—

“That at the time of the commencement of this suit, the said complainant, George F. Harding, was and continuously since has been and now is a resident and citizen of the State of California, and a citizen of no other state or country,”

was inserted in said petition because and on account of the allegation contained in the bill filed herein on October 19, 1907, and in the amended bill filed herein on October 25, 1907, which statement is as follows:

“Your orator, George F. Harding, a resident and citizen of the State of California, humbly complaining, respectfully represents unto your Honors.”

3. The said statement above quoted from and so contained in said petition for removal as to the residence and citizenship of said George F. Harding was due entirely to the misinformation under which I then labored and which misinformation was derived by me from the said statement above quoted and so as aforesaid contained in said original and amended

bills as to the residence and citizenship of said George F. Harding.

And further deponent saith not.

LEVY MAYER.

Subscribed and sworn to by said Levy Mayer before me, a Notary Public, this 15th day of April, A. D. 1909.

(Sgd.) KATHRYN McDONALD,

(SEAL)

Notary Public.

UNITED STATES OF AMERICA,  
NORTHERN DISTRICT OF ILLINOIS, } ss.  
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,  
In and for the Northern District of Illinois,  
Eastern Division Thereof.

George F. Harding, }  
vs. } No. 28,865.  
Standard Oil Company *et al.* }

Harlen H. Parmenter, being first duly sworn, upon oath deposes and says that he is of lawful age; that at the request made in March, 1909, by said Corn Products Manufacturing Company, he has since March 17, 1909, been making careful and exhaustive investigation for the purpose of determining the residence and citizenship of the above complainant, George F. Harding, on October 19, 1907, and before and continuously since said date up to the present time; that based upon said investigation deponent says that for a long time continuously prior to Oc-

tober 19, 1907, and on October 19, 1907, and continuously since up to and including the present time, said complainant, George F. Harding, had been, was and is a citizen of the State of Illinois and a resident of the City of Chicago, in said State of Illinois; that said George F. Harding was not, on October 19, 1907, and at no time since has been, and is not now a citizen of the State of California, or a resident of said state.

And further deponent saith not.

(Sgd.) HARLAN H. PARMENTER.

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

Harlen H. Parmenter, being first duly sworn, upon oath deposes and says that the above and foregoing affidavit, by him subscribed, is true to the best of his knowledge, information and belief.

HARLEN H. PARMENTER.

Subscribed and sworn to before me, a Notary Public, this 15th day of April, A. D. 1909.

(Sgd.) DAVID F. ROSENTHAL,

(SEAL)

*Notary Public.*

## EXHIBIT D.

PROCEEDINGS OF APRIL 16TH, 1909.

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“Mr. Mayer: This is a motion, your Honor, for leave to amend the petition for removal which we filed in the case entitled George F. Harding against the Sandard Oil Company *et al.*

“Mr. Ammen: If the court please, before this is taken up—

“Mr. Mayer: Pardon me, pardon me.

“Mr. Ammen: I want to state that I ask for a postponement of the presentation of this matter.

“The Court: Well, I don’t know what he is asking. Just sit down for a moment.

“Mr. Mayer: The petition for removal in this case states that George F. Harding, who is a citizen and resident of California—that statement is made in the petition based upon the statement contained in Harding’s bill. The motion now submits to the court, under oath, that that statement made by Harding in his bill was false, and that instead of being a citizen and resident of California, he was, on the date of the filing of the bill, a citizen and resident of the State of Illinois, and the petition for leave to amend was to insert in the petition for removal of that, namely, that the statement contained in the bill of Harding was false in that he was then a citizen and that he is now a citizen and resident of California, and the United States Supreme Court, in the 191st U. S., has decided that it follows as a matter of course, it is like amending a process.

“Mr. Ammen: If the court please, I want to make a statement here. In the Harding case, Mr. Harding alone has appeared of record as counsel. I will enter a special appearance for

him in the case in writing for the purpose of postponing the hearing or allowance of this motion. Mr. Harding is not in town. He has not been served.

"The Court: Was this case before me?

"Mr. Ammen: This is the other case. This is the Harding case.

"The Court: I did not hear this case.

"Mr. Ammen: This is the case in which your Honor enjoined any further proceedings, but your Honor entered an order in the real estate company's case, if your Honor will remember, in the Chicago Real Estate Loan & Trust Company case.

"The Court: This is the case of Harding against the Corn Products Company and others. And the other case was the Real Estate Title & Trust Company against the Corn Products Company.

"Mr. Mayer: Against the same defendant.

"The Court: In this case you say the complainant is—

"Mr. Mayer: George F. Harding.

"Mr. Ammen: George F. Harding has entered his appearance as his own attorney.

"The Court: As his own attorney?

"Mr. Ammen: Yes, sir, and he is not in town.

"The Court: When will he be here?

"Mr. Ammen: We think in a few days. We can communicate with him very quickly and find out. I am prepared to enter a special appearance for him. But he is his own attorney. Your Honor knows his activity in these cases and he would be likely to object to a matter of this kind if I did anything in his absence, at least without an opportunity to say, 'go ahead without me,' or saying, 'I will be there.'

"The Court: I certainly will do that if you say he will be herein a few days.

"Mr. Mayer: Will your Honor pardon me a moment? I have the record in the United States

Supreme Court and Circuit Court of Appeals, which shows that William J. Ammen and George F. Harding appeared throughout the entire litigation for the plaintiff in this second suit.

"Mr. Ammen: Why, certainly—

"Mr. Mayer: And that both of them appeared in the motion to remand this second suit. This is the second suit whose prosecution your Honor enjoined.

"The Court: Let me see the—

"Mr. Ammen: That was the case in which Mr. Harding and I appeared for the respondents to the injunction rule; that was not this case. This case has never been before the Court of Appeals. In the Real Estate Company case—

"The Court: Let me see that.

"Mr. Mayer: Yes, I will give it to your Honor.

"Mr. Ammen: In that case your Honor will remember you enjoined Harding and myself and Harding's son. Now, as respondents, we appealed as the parties enjoined. Mr. Harding and I did appear in that case.

"The Court: As attorneys for the plaintiff?

"Mr. Ammen: As attorneys for the respondents.

"The Court: That does not meet the question here. We are wasting time. The assertion has just been made by your adversary—

"The Court: Proceed with this matter.

"Mr. Mayer: I have no doubt, your Honor, that this is fairly fresh in the court's mind. I do not want to repeat. In this suit the Real Estate Company was the plaintiff. In that suit one of the defendants, the Corn Products Refining Company, applied to your Honor for an injunction against George F. Harding and his attorney from prosecuting the second George F. Harding suit. That is the motion that your Honor heard; that is the motion that went to the Court of Appeals, and on a writ of *certior-*

*ari* to the United States Supreme Court, and that is the motion, your Honor, in which the Court of Appeals has only Monday of this week granted a re-argument after it had been to the United States Supreme Court, and that is now under consideration, oral argument having been had day before yesterday before the Circuit Court of Appeals, and under consideration by Judges Grosscup, Kohlsaat and Baker. The only controversy that has been before your Honor has been by the contempt rule which your Honor recalls and the application for an injunction to enjoin the second suit. I do not presume your Honor has kept track of the decisions, but the Circuit Court of Appeals held that your Honor did right in enjoining the second suit, that that is the law, and that it ought to have been enjoined, that the second suit is the same as this, begun by the same parties and against the same parties, involving the same subject-matter, and that it is an apparent attempt to get away from the first case. Now, they reversed your Honor on this ground that your Honor's injunction, which was decided in December, December 13, was not an injunction until December 26, when it was physically signed, and had to be continued through this litigation in the court there—I mean in the Federal Supreme Court—that your Honor did not enjoin on December 13th at all, and that all you did on December 13th was to discharge the rule for contempt; and because the clerk did not, on that date, make a physical minute of your Honor's order. The Circuit Court of Appeals held in its opinion—I want to say to your Honor that on the rehearing an application was made for leave to grant oral argument and supply a printed brief. They held it was contempt. It was suggested that you did not enjoin on December 13. Upon that point, and that only, did the Circuit Court of Appeals reverse the in-

junction because they said the motions to dismiss having been presented on December 26—I don't know whether your Honor will recall Christmas, the intervening holidays—that these motions to dismiss were presented before your Honor decided the injunction, and that, therefore, the motion to dismiss ought to have been allowed. All of the controversies of every kind had reference to the second suit. Your Honor's rule for contempt was because they began the second suit; your injunction was to enjoin the second suit. Now, let us see what the record shows.

“Mr. Ammen: What page, please?

“Mr. Mayer: Page 415. ‘Prayer for an appeal from the injunction. Now, come the respondents, George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen appearing themselves,’ etc. And it is signed George F. Harding, George F. Harding, Jr., A. B. Joyner, William J. Ammen, respondents, by William J. Ammen, their solicitor. And in the corner, William J. Ammen, solicitor for respondents. The assignment of errors is signed George F. Harding, George F. Harding, Jr., A. B. Joyner, William J. Ammen, respondents, by William J. Ammen, their solicitor. The certificate of evidence—I read from page 231—shows the following. Instead of that page I first want to read from page 217.

“‘The Court: I shall not, of course, dispose of the question on which the court heard arguments at the last hearing till something is done under the order to restrain the further prosecution of the suit, disposing of the motion to remand, that is the motion in the second case. In other words, the motion to remand is not in order now in view of what the court has done in this litigation.

“‘Mr. Harding: I will study on that. In



the meantime we want to make the motion to remand and ask your Honor to hear it.

“The Court: We will come to that after the order has been entered. Unless it is modified it will not permit the consideration of the motion which counsel now indicates.

“Mr. Ammen: It is an endeavor to preserve the rights of the parties in the other case’—they are discussing now the motion to remand the second case.

“The Court: I don’t think you need to remind me of the details of the situation. As a matter of substance you gentlemen were here representing the interests that the complainant in each case stood for; you worked together. And regardless of what the record may show to have been a formal motion through which counsel went in getting his appearance of record in the cause, we all have no doubt in our minds as to who the attorneys for the plaintiff were in the two suits, but if you want I must await the arrival of your associate; unless there is some emergency opposed to it, you can have a continuance.

“Mr. Ammen: He, not only being his own counsel and attorney, but being the client, ought to have it.

“The Court: But I do not want anybody to misunderstand me. I am not doing this on the theory that the complainant in this suit is not now represented before me.

“Mr. Ammen: Even if that be true, your Honor, still—

“Mr. Mayer: Now, the emergency is this: They have given notice, if the court please, to ask for an immediate *procedendo* from the Circuit Court of Appeals in the appeal from the injunction, and at no time do we get in there but what there rings in our ears interminable delay. We want an immediate mandate. We have had one experience, your Honor, which I

think Judge Calhoun and myself will never have again in this litigation so far as we can avoid it. When we present the motion, with the permission of the court, we are going to ask its consideration, and we are going to ask an immediate order in accordance with what the court desires and an entry of that order. You will remember that when I presented the bill, a draft of the injunction order, on December 23, counsel stated—and I speak it word for word from the record—that he would like a few days' adjournment so as to enable him to study my draft of the order, and to present to your Honor his draft. Your Honor directed that he should present his draft, and at Mr. Ammen's instance adjourned until 10 a. m., December 26. On Christmas, he served me, at the hotel, with a copy of the motion to dismiss, and at 10 a. m. of December 26, instead of presenting the draft, his draft of the order, to prepare which and only which, your Honor gave him at his instance an adjournment, he stated that he had not time to study my order. On December 26 he came in with the motions to dismiss. We want to avoid that contingency, your Honor. The Supreme Court has held that we are entitled to amend as a matter of course; that a petition for removal is a process, and that we have as much right to amend as you have to amend a summons or process.

“Mr. Ammen: Is this an argument, your Honor? I thought he was just presenting the emergency.

“Mr. Mayer: This is the emergency, and your Honor need not be reminded of it. We have been tricked in this litigation. When your Honor granted the adjournment heretofore at the instance of the same solicitor who asks it now, and he put his request upon an unfair and untrue basis by saying he did not represent Mr. Harding—your Honor interrupted, and I want-

ed to read where he swore that he did represent Mr. Harding in the second suit—I have not the transcript here. Now, we want to avoid that. If, your Honor, an application for leave to amend is not good, a motion can be made to vacate it. They are not prejudiced; we may be prejudiced. We do not know what motion may be presented tomorrow or the next day. Mr. Harding is 80 years old. If your Honor would read the affidavit upon which this motion is based, we do not think you would entertain a suggestion of continuing it. We have exhausted investigation in Illinois and in California, and we have the evidence here that the statement in his bill was false, that he never was a citizen of California, never paid taxes in California, never was a householder, never registered, never had his name in the directory, city or telephone, and only went there at short intervals for the purpose of securing a divorce, which was reversed by the United States Supreme Court; and that since 1902, has never put foot in California.

“Mr. Ammen: Now, the question of the emergency. Is that going to the question of emergency?”

“Mr. Mayer: They have a copy and that is the motion.

“The Court: Do you mean the allegation in the petition of the defendant presented to the state court in the suit of Harding against the Corn Products Company and others, and then the allegation that the complainant in that state court suit was a citizen of California?”

“Mr. Mayer: Yes, your Honor, and they have a copy of it.

“The Court: And that that allegation followed the bill of the complainant in the state court?”

“Mr. Mayer: Word for word, and the affidavit is here presented by myself, your Honor,

showing the misinformation contained in the language of that petition for removal, obtained from the complainant's own bill.

"Mr. Ammen: Now, I want to be heard on this question of emergency, your Honor, if this motion was to be heard. I am appearing here specially first to object to its being heard and asking a postponement; and if it is to be heard, why, I want to put in proof under my special appearance. So I insist upon its being postponed for reasons that I will state fully. I appear only specifically for this purpose. Mr. Mayer has made some very serious charges here which I will show to your Honor are untrue—made them against me. I will show to your Honor they are untrue, from the record.

"Mr. Mayer: Now, if it pleases the court, our amending petition leaves the issue, if they want to meet an issue of facts. He cannot be heard in contradiction of the application to amend. If the amendment controverts the citizenship it is an issue of fact presented which is triable before a court, a jury or before a master. But we object, your Honor. Now, we would not object if the granting of our motion would prejudice them. The refusal of your Honor to entertain the matter now may prejudice us. You ask us in what way; the old story that the burned child fears the fire is the only answer that I can make. We have been burned by the conduct of the defendants in this litigation by trusting to their honor, to their integrity—and I am speaking clearly to the record as to what transpired. Now we urge your Honor to grant us our motion. And if, when Mr. Harding comes back, he can show to your Honor that this motion is ill-advised, he can move to vacate it; but by granting the motion, your Honor, our status is fixed in this record and nothing that Mr. Ammen or his associates can do can undo that record. We have relied heretofore, your Honor, upon mat-

ters remaining in *statu quo*. We have been ignominiously deceived, and your Honor, I believe, is the witness to what I am saying and to its correctness.

“The Court: The trouble about granting this motion that you now make and that you are asking to be acted upon now is this: The motion is for the amendment of the petition in respect of a matter of fact, a matter of substance. The fact of the residence of the complainant’s is a matter, in respect of which, if I must take notice, he would have the right to be heard as a witness, either by affidavit, or a witness in open court; and, if the motion to amend the petition is made in his absence, and he appears here by his counsel, no matter what the representation of his counsel may be, as to whether or not he is his counsel, or whether or not he represents his client, it seems to me that I ought to let the matter rest if the man is going to be here in a few days or so, that he may take the stand and testify.

“Mr. Mayer: Your Honor will pardon me. I presume that this question in its present form has never been before your Honor. I assume so, otherwise your Honor would not have indicated the expression that you expressed. The practice in the law is—suppose that this original petition for removal had stated that he was a citizen of Illinois. The bill states citizen of California; the original petition states citizen of Illinois, the petition for removal. All that the amendment does is to put into the petition for removal a statement that he was a citizen of Illinois. That does not bind him. You cannot hear his affidavit now, your Honor, in opposition to the motion to amend. You could take testimony after there is an issue of fact made. His bill alleged California citizenship, the petition for removal alleging Illinois citizenship. And your Honor will perceive his bill is not

sworn to in which he alleges he is a citizen of California then. Testimony can be taken before a Master, a jury or a court, but courts never hear testimony upon an application to amend because the amendment does not bind the complainant; the amendment nearly puts into the pleadings what we claim which we say should be there when the petition was filed. The issue of fact thus made by their bill is tried, as any other issue before a court, jury and before a Master, and I suggest permitting here an affidavit from Mr. Harding, that would be trying the issue before there is an issue made; the issue should be made. If Mr. Harding has the hardihood to take the stand and contend that since 1902 he has not been a resident or citizen of Illinois, in fact continuously since 1862, or his residence is given there, we have living witnesses at our call. But then your Honor will hear witnesses. Usually it is referred to a Master or court—in open court—and their testimony is taken away by commissioners. But your Honor, on application for leave to amend, because that leave to amend does not bind them, it simply enables us to put our pleadings in shape. Suppose, your Honor, it was an application for leave to amend a return on a process, or to amend a subpoena or bill, or an answer, that amendment would not bind the other side, and you would not permit the other side to controvert the fact sought to be inserted in the answer or writ. You would say you can make your issue in that answer or writ by replication or motion. And that is the practice, your Honor.

“The Court: In view of the nature of the injunction—when is your client coming back?”

“Mr. Ammen: Your Honor, he would like to stay for two weeks, but we will have him back.

“The Court: Where is he now?”

“Mr. Ammen: He is in one of the New England states.

"Mr. Mayer: Where is he? Which one?

"Mr. Ammen: That doesn't make any difference, unless the court would like to know more definitely.

"Mr. Mayer: I would like to know definitely.

"The Court: Do you intend to make any move in this case before the court enters his order to dispose of defendant's application to amend the petition—

"Mr. Ammen: I claim—

"The Court: Will any motion be made in this case before the court enters the order disposing of this motion, the defendant's petition to remove?

"Mr. Ammen: In this present case, the Harding case?

"The Court: Yes.

"Mr. Ammen: I don't contemplate such a motion and can't think of any that can be.

"The Court: Will any motion be made prior to disposing of the petition?

"Mr. Ammen: Not unless it is presented to your Honor; that is enough. If it should be presented to any other Judge before it is presented to your Honor—

"The Court: Proceed with the motion. I will hear you on your motion to amend this petition.

"Mr. Ammen: Your Honor, won't you allow me to reply to this question?

"The Court: Will any motion be presented to any court in the case of Harding against the Corn Products Company and others?

"Mr. Ammen: Not if your Honor now says not; no.

"The Court: I am not saying anything.

"Mr. Ammen: Very well, then; I say no.

"The Court: I am saying to you whether any motion will be presented to any court—

"Mr. Ammen: No, sir.

"The Court: In the case of Harding against the Corn Products and others—

"Mr. Ammen: It will not.

"The Court: —before this court disposes of the defendant's motion to—petition for removal?

"Mr. Ammen: It will not.

"Mr. Mayer: Now, your Honor, that isn't quite fair. How about the motion in the first case to dismiss? We do not know what the Circuit Court of Appeals is going to do.

"Mr. Ammen: There has been a most astonishing statement made here about what has been taking place in other cases which your Honor has taken as true—most astonishing.

"The Court: I haven't anything to do with those cases. Do you propose to proceed in this case within two weeks before Mr. Harding gets here?

"Mr. Ammen: Not that I know of. I don't think there is anything we can do in this case. We certainly have no motion in contemplation before he gets here, and I think I may say no.

"The Court: Do you say it?

"Mr. Ammen: Yes, I do.

"The Court: No motion will be made in this case?

"Mr. Ammen: Until this matter can be heard.

"The Court: Until the court disposes of the defendant's motion to amend the petition to remove?

"Mr. Ammen: I say that.

"The Court: No motion will be made in this case.

"Mr. Ammen: That is right.

"The Court: That is, in the case of Harding against the Standard Oil Company *et al.*?

"Mr. Ammen: Yes, sir.

"The Court: Now, when will the complainant be here?



"Mr. Ammen: We can have him here by a week from today.

"The Court: I will be here another week, but will be gone for three weeks after that.

"Mr. Ammen: When will your Honor be back?

"The Court: I will be here another week.

"Mr. Ammen: We can have him here next Friday?

"The Court: A week from today?

"Mr. Ammen: All right; not later than Friday, a week from today. Then that is the date at which it can be heard?

"The Court: Yes.

"Mr. Ammen: How long will the court be gone; for three weeks?

"The Court: Probably three weeks.

"Mr. Ammen: We would rather have it heard then than to have it delayed, if your Honor will fix it for next Friday.

"The Court: Yes, in view of the nature of the amendment I will continue this motion until next Friday.

"Mr. Mayer: Will your Honor pardon me? I don't take issue with what your Honor has indicated, but so that there can be no mistake, do I understand that there is a stipulation made in open court that in view of your Honor continuing our motion for leave to amend the petition for removal in *Harding v. The Standard Oil Company et al.*, that no motion, either in this case or in the case of the *Real Estate Loan & Trust Company v. The Corn Products Company et al.*, will be made on behalf of the Real Estate Loan & Trust Company or George F. Harding or any of his associates, in this or any other court, until this motion for leave to amend the petition for removal has been heard and disposed of?

"The Court: That is the understanding.

"Mr. Mayer: Is that correct, Mr. Ammen?

"Mr. Ammen: No—that is correct except that it must be understood that it is under special appearance. We do not want it to be understood to be a general appearance by a general stipulation that we might waive our objections to the jurisdiction of the court in the *Harding* case. This we rely upon very much. But it is under this special appearance; we have no hesitancy in making that statement.

"The Court: Well, I am now dealing with you in your capacity as a member of the bar, and I am getting pretty near tired of wasting my time on these technical propositions when I am dealing with officers of the court.

"Mr. Ammen: We do not think this is a technical proposition. We think it is very vital.

"The Court: I don't care whether you are here specially in this case or whether you are simply here in this court as an officer of the court in court when something happens. Do you mean to say to me that in neither of these two cases any motion will be made in any court on behalf of the complainant in either of those two cases?

© "Mr. Ammen: Yes, sir; I have already stated it.

"The Court: Until I enter an order disposing of the defendant's motion to amend the petition to remove the *Harding* case?

"Mr. Ammen: I have already stated it and I repeat it.

"The Court: And that is on consideration of my continuing the application to amend that petition until next Friday morning?

"Mr. Ammen: Yes, sir, and upon the condition imposed by the court.

"The Court: Yes.

"Mr. Mayer: Now, your Honor, I will ask leave to file the motion.

"Mr. Ammen: Now—

"Mr. Mayer: Pardon me, please. May we

have leave to file the motion with the accompanying papers attached?

"Mr. Ammen: I don't know that there is any need to file it.

"Mr. Mayer: We would like it.

"The Court: The court rules require the motion to be in writing. Call your next motion. In this case of *Harding v. The Corn Products Company* I desire counsel to each give his adversary by 12 o'clock Thursday on paper a memorandum of any and all authorities that you desire to call the attention of the court on Friday morning.

"IN THE UNITED STATES CIRCUIT COURT IN AND  
FOR THE NORTHERN DISTRICT OF ILLINOIS, EAST-  
ERN DIVISION THEREOF.

"George F. Harding	} No. 28-865.
<i>vs.</i>	
Standard Oil Company of New Jersey <i>et al.</i>	

"Before the Honorable K. M. Landis, at 2 o'clock P. M., April 16, 1909, the following proceedings were had in the above entitled cause:

"Mr. Mayer: We have handed to the Clerk the order, your Honor, pursuant to your Honor's decision this morning.

"The Court: Have you seen this?

"Mr. Ammen: Yes, your Honor. I don't think there is any need of any order, but if there is to be any entered I would like to be heard very briefly upon a few points in it.

"Mr. Mayer: We press that the order be entered. We don't want any more order in *nubibus*.

"Mr. Ammen: If I have an opportunity to correct any of the misstatements made by Mr.

Mayer this morning I am glad of the opportunity to do it.

"The Court: I think it is not necessary.

"Mr. Ammen: I want to be heard a moment upon one question. Have you got the order before you?

"The Court: Yes.

"Mr. Ammen: Your Honor spoke this morning about this question of special appearance being technical, and that is no doubt so in many instances. But here it is a very vital matter, and these gentlemen very well know it.

"The Court: What I had in mind when I said that was this: You have been in before me a number of times generally for the complainant and with the complainant, in the case of *Harding v. The Corn Products Company*.

"Mr. Ammen: Merely on the motion for remand.

"The Court: Yes, in connection with the other case. You have been here in open court repeatedly, as has Mr. Harding, the complainant.

"Mr. Ammen: I understand.

"The Court: And presented to me matters which only could be presented by counsel for the complainant in that case.

"Mr. Ammen: The only thing that we were urging in the *Harding* case was a motion for remand.

"The Court: I will have to make short work of this. Why don't you file your appearance?

"Mr. Ammen: I have, but I want the record to show that that is the appearance upon which it is done. Your Honor gave quite a good deal of time to Mr. Mayer this morning, and I think I ought to be heard.

"The Court: I will hear you, and you need not remind me that I have heard your adversary. Rather than have you go out here and

even unjustly say that I will not hear you I will sit here all the afternoon.

"Mr. Ammen: Your Honor just said that you would make short work of it; and, so far as I am concerned, you may make short work of it.

"The Court: I will hear you.

"Mr. Ammen: I want to say in justification that when the question is one of diverse citizenship a general appearance in the case, after removal, may be fatal to a motion to remand. There is no doubt about that. So that I want to guard against a general appearance in this case. Our motion to remand, Mr. Harding filed himself; but in that motion he very carefully limits his appearance to the purpose of the motion, insisting that this court has no jurisdiction. Now, I limited my appearance in writing this morning to the same effect. This order is drawn so as to show a general appearance by me. Now, I don't want it worded that way.

"Mr. Mayer: It is not that way, your Honor. If your Honor will read the last two lines of the first paragraph (handing paper to the court).

"The Court: This morning you stated that you appeared specially only to ask that I should not hear it; that you were not attorney for the complainant.

"Mr. Ammen: Your Honor, I stated that I was not attorney of record in this particular *Harding* case, which is true. The only thing that is material, so far as that is concerned—

"The Court: Well, your appearance is now for the purpose of questioning the propriety of the removal, not desiring that it shall recite that you appear generally here?

"Mr. Ammen: That is right, and my appearance is stated in writing. We regard it as very important.

"The Court: Let me see it—(The special ap-

pearance filed this morning was here handed to the Judge).

"The Court: I do not see any occasion. I do not care for a history of the litigation on this motion, but I now give you leave to withdraw this paper and leave to file a special appearance, which you can do in two lines.

"Mr. Ammen: If your Honor will leave that intact I will give your Honor another copy, this one, instead of the one that is filed.

"Mr. Mayer: No, I would rather you used the one that has been filed. You are sliding a lot of things in here that we know nothing about.

"The Court (reading): 'I, William J. Ammen \* \* \* the papers in said cause.'

"(The court here struck out of said appearance filed this day certain parts thereof with a pen.)

"Mr. Ammen: I think that is sufficient, but at the same time I would prefer to have it stand as it was, if your Honor will permit it. One other thing in this order, if your Honor will look at it; I have only made some slight changes; the first thing is in the sixth line where it says 'Due notice of said motion having been heretofore given.' I would like to have added 'to said Ammen.' That is true; no other notice was given.

"Mr. Mayer: We served notice upon Mr. Ammen and Mr. Harding. Mr. Ammen accepted service for Mr. Harding.

"Mr. Ammen: I did not accept notice for any one. The notice was given to me, 'to said Ammon.' I would like to have stated there.

"The Court: 'Due notice of said motion having been heretofore given to said Ammen as solicitor for complainant.'

"Mr. Ammen: I think that is all right.

"The Court: Well, that is true, isn't it?

"Mr. Ammen: Well, I think that is all right.

I have stated what my views on that are. At the end of that same paragraph——

“The Court (reading): ‘And the said George F. Harding now appears in open court by William J. Ammen, his solicitor, who, however, protests that he appears and appears specifically only for the purpose of this motion.’

“Mr. Ammen: I want ‘and appears’ out, and I would like to have this added, ‘As stated in his written appearance this day filed herein.’

“Mr. Mayer: I object to that. The written appearance speaks for itself.

“Mr. Ammen: I want it to appear here that my appearance now is under that written appearance, and not a general one.

“The Court: That may be added. Go ahead.

“Mr. Ammen: On the next page it recites that ‘the hearing of said motion to amend is hereby continued before this court until Friday, April 23, 1909, at 10 o’clock a. m., or as soon thereafter as the matter can be heard. The stipulation above referred to and upon which said continuance is granted is as follows.’ Now, I would like your Honor to add this language, ‘Said stipulation upon the part of said Ammen—the making of said stipulation upon the part of said Ammen being imposed by the court as a condition to the granting of said continuance.’ I think that is very fair and the truth.

“Mr. Mayer: I object.

“Mr. Ammen: I was perfectly willing to make it as a condition.

“The Court: I will now wipe all this out. Are you willing that I should hear this and dispose of the matter save only as you are in duress by the——

“Mr. Ammen: No, it is not duress. Change that in any way you want; I am quite willing to make it, but I want it understood that it is with a view of getting a continuance, not a bargain. I want the truth. I think the court was

reasonable in his requirements, but I think the other side ought to be in a similar situation. I think the record ought to show that I made it in order to have the objection to the continuance removed. The argument made by Mr. Mayer was that we will do this, we will do that, and I said very well. Now, they say that I made a stipulation, and I have just added that the making of said stipulation upon the part of said Ammen was imposed by the court as a condition to the granting of said continuance. Change it this way, if your Honor wishes to get rid of the suggestion of duress; I didn't mean that; all I want to show is that I made this stipulation in order to overcome in the mind of the court the objection made by Mr. Mayer that we might make some moves. That was all. It was in connection with the continuance, and the court said, 'Will you maintain the *status quo*?'

"The Court: It doesn't make any difference to me whether that is in there. There is no substance in it. Is there any objection?"

"Mr. Mayer: Why, it states on the first page, 'Thereupon, in consideration of the stipulation hereinafter referred to, entered into by said William J. Ammen in open court, the hearing of said motion to amend is hereby continued.'

"Mr. Ammen: Turn back to the language that he has read and put in these words, 'in order to avoid the objections to said continuance.' Now, that is all I want, if you will put it in there.

"The Court: Well; go ahead.

"Mr. Ammen: That is on the last line of the first page, your Honor.

"The Court: Yes.

"Mr. Ammen: Now, I would like your Honor to add an objection on the last page to the filing of these papers, for this reason: Mr. Mayer says, 'That leave be and the same is hereby given to said Corn Products Manufacturing



Company to file herein said motion to amend, together with all affidavits and papers attached thereto, and accompanying the same. Whereupon said motion, with said affidavits and papers, is now here filed in open court.' Although not in the form of a formal amendment to petition for removal has been treated as bringing before the court the facts, and to be considered as a part of the petition, and in effect an amendment.

"The Court: What do you mean?

"Mr. Ammen: All I want is an objection to the filing of those papers added. You could put it in this way, your Honor, if you want, on the bottom of the last page—well, your Honor was writing it; I just wanted to shorten it is all.

"The Court: 'Complainant objects to the filing of the affidavits and papers as above; objection overruled; complainant excepts.'

"Mr. Ammen: Ought not Mr. Mayer also to assure the court to maintain the *status quo*?

"Mr. Mayer: Mr. Mayer will not so assure the court. We will move in any direction that is legal and proper.

"Mr. Ammen: Your Honor has enjoined the bringing up of our motion to remand, filed in December, 1907. We have not been able to bring it up; before we can bring the motion up they are interjecting others. Now, is it fair for your Honor to impose this upon us and allow them—

"The Court: I will dispose of all these matters if you will go on with the argument.

"Mr. Mayer: I am ready.

"Mr. Ammen: I don't want to take it up in the absence of Mr. Harding. Your Honor says, 'Motion to amend, together with all affidavits and papers attached thereto and accompanying the same,' and leave is granted to be filed. I have examined those which are attached; I would like to know if there are any that accompany that are not attached?

"The Court: Everything has been filed, I take it.

"Mr. Ammen: The clerk says that is the only one filed.

"Adjourned."

## EXHIBIT E.

SPECIAL APPEARANCE AS CHANGED BY JUDGE LANDIS.

UNITED STATES OF AMERICA,  
 NORTHERN DISTRICT OF ILLINOIS,  
 EASTERN DIVISION. } ss.

IN THE UNITED STATES CIRCUIT COURT,  
 In and for the Northern District of Illinois,  
 Eastern Division Thereof.

George F. Harding,  
*Complainant,*

*vs.*

Standard Oil Company of New Jersey,  
 Corn Products Company, Corn  
 Products Refining Company, Corn  
 Products Manufacturing Company,  
 Conrad H. Matthiessen, Charles L.  
 Glass, William W. Heaton, Norman  
 B. Ream, William J. Calhoun, Joy  
 Morton, Benjamin Graham, T. B.  
 Wagner, H. G. Herget, Thomas P.  
 Kingsford, William C. Sherwood,  
 W. H. Nichols, Edward T. Bedford,  
 and E. P. Wemple,

*Defendants.*

No. 28,865.

I, the undersigned, William J. Ammen, hereby enter my special appearance as solicitor for the complainant in the above entitled cause for the purpose *only* of objecting to the hearing or allowance of the motion of said Corn Products Manufacturing Company for leave to amend the removal petition, or removal papers, in said cause, ~~the contention of the said complainant being as stated in his motion~~

~~filed in said cause on December 22, 1907,~~  
 remand the same to the state court, that this cause  
 has never been properly removed to this court, and  
 is now pending, under the law, in the Superior Court  
 of Cook County, Illinois, and that this court has no  
 jurisdiction in said cause or over the said complain-  
 ant therein, and that the said motion to remand to  
 the state court must be allowed whenever that mo-  
 tion can be heard, the said Harding having re-  
 peatedly heretofore asked this court to hear and  
 allow the said motion to remand, but this court  
 having heretofore and up to this time declined  
 to hear the same, and having actually enjoined the  
 bringing on of the same to be heard as shown by the  
 record in the suit of the *Chicago Real Estate Loan  
 & Trust Company v. The Corn Products Company,  
 and others*, in the suit in chancery, No. 28695, pend-  
 ing in this court, to which record reference is hereby  
 made; and in entering this appearance all the rights  
 and claims and contentions of the said complainant  
 stated or referred to in the said motion to remand  
 are hereby renewed and saved and reserved by and  
 in behalf of the said complainant.

WM. J. AMMEN,  
*Solicitor for said George F. Harding.*

NOTE: The change in the above in ink was made  
 by Judge Landis, on April 16, 1907, as shown by the  
 shorthand reporter's transcript of that date.

## EXHIBIT F.

ORDER OF APRIL 16, 1909.

IN THE UNITED STATES CIRCUIT COURT,  
In and for the Northern District of Illinois,  
Eastern Division Thereof.

George F. Harding,	}	No. 28,865.
<i>vs.</i>		
Standard Oil Company of New Jersey		
<i>et al.</i>		

Now comes on to be heard the motion this day presented herein by the Corn Products Manufacturing Company, one of said defendants, asking for leave to amend, as prayed for in said motion, the petition for removal in said cause, heretofore filed herein by said Corn Products Manufacturing Company, and due notice of said motion having been heretofore given to Wm. J. Ammen, solicitor for complainant, and the said Corn Products Manufacturing Company now appears in open court by Levy Mayer and William J. Calhoun, Esqs., its solicitors, and the said George F. Harding now appears in open court by William J. Ammen, his solicitor, who, however, protests that he appears specially only for the purpose of this motion, as stated in his written appearance this day filed herein.

Whereupon said counsel for said Corn Products Manufacturing Company press said motion for disposition, and said William J. Ammen, counsel for said George F. Harding, objects to the hearing of said motion at this time because of the absence from

the City of Chicago of said George F. Harding, the complainant; thereupon, in consideration of the stipulation hereinafter referred to, entered into by said William J. Ammen in open court, in order to avoid the objection to said continuance, the hearing of said motion to amend is hereby continued before this court until Friday, April 23, 1909, at 10 o'clock A. M., or as soon thereafter as the matter can be heard. The stipulation above referred to and upon which said continuance is granted, is as follows:

Said William J. Ammen, as counsel for said George F. Harding, complainant in this suit, and as counsel for the Chicago Real Estate Loan & Trust Company, complainant in the suit against Corn Products Company *et al.*, pending in this court as Number 28695, and as counsel for George F. Harding, Jr., William J. Ammen and A. B. Joyner, now here stipulates that no motion of any kind shall or will be presented or made on behalf of said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, or any or either of them, in said cause, or in the case of the *Chicago Real Estate Loan & Trust Company v. Corn Products Company*, either in this court, before any judge thereof, or in the Circuit Court of Appeals, in and for the Seventh Circuit, to which an appeal was heretofore taken from an injunction heretofore entered in this court in said Chicago Real Estate Loan & Trust Company case, until the said motion of said Corn Products Manufacturing Company to amend its said petition for removal has been heard and decided of record by this court.

It is further ordered that counsel for said George

F. Harding and for said Corn Products Manufacturing Company shall deliver to each other, respectively, not later than 12 o'clock noon of Thursday, April 22, 1909, a list of all court decisions upon which they may respectively rely on the hearing before this court of said motion to amend.

It is hereby further ordered against the objection of said Ammen that leave be and the same is hereby given to said Corn Products Manufacturing Company to file herein said motion to amend, together with all affidavits and papers attached thereto and accompanying the same.

Whereupon said motion, with said affidavits and papers, is now here filed in open court.

Complainant objects to filing of affidavit and papers as above. Objection overruled. Complainant excepts.

Chicago, April 16, 1909.

## EXHIBIT G.

ORDER OF MAY 15, 1909, GRANTING LEAVE TO AMEND  
REMOVAL PETITION.

UNITED STATES OF AMERICA, }  
NORTHERN DISTRICT OF ILLINOIS, } ss.  
EASTERN DIVISION.

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May 15, 1909.

## IN THE UNITED STATES CIRCUIT COURT

IN AND FOR THE NORTHERN DISTRICT OF ILLINOIS,  
EASTERN DIVISION THEREOF.

Present: Hon. A. L. Sanborn, District Judge.

George F. Harding,

*vs.*

Standard Oil Company of New  
Jersey, Corn Products Com-  
pany, Corn Products Refin-  
ing Company, Corn Prod-  
ucts Manufacturing Com-  
pany, Conrad H. Matthies-  
sen, Charles L. Glass, Will-  
iam W. Heaton, Norman B.  
Ream, William J. Calhoun,  
Joy Morton, Benjamin Gra-  
ham, T. B. Wagner, H. C.  
Herget, Thomas P. Kings-  
ford, William C. Sherwood,  
W. H. Nichols, Edward T.  
Bedford and E. P. Wemple.

No. 28,865.

There now comes on to be heard the motion of the  
Corn Products Manufacturing Company, one of said  
defendants, filed herein on April 16, 1909, asking for



leave to amend its petition of removal, contained in the transcript of record filed herein by leave of court on November 6, 1907; and the court having considered said motion to amend and the affidavits and consents accompanying said motion and also filed herein, and the objections and answer to said motion of said George F. Harding, filed herein, and the reply filed herein by said Corn Products Manufacturing Company to said objections and answer; and the court having heard the arguments of Levy Mayer and William J. Calhoun, Esqs., solicitors and of counsel for said Corn Products Manufacturing Company, in support of said motion, and the arguments of George F. Harding and William J. Ammen, Esqs., solicitors and of counsel for said George F. Harding, in opposition thereto, and being fully advised in the premises, FINDS, that said motion for leave to amend should be granted, as is in this order directed.

WHEREFORE, the premises considered, it is hereby ORDERED and ADJUDGED that leave be, and the same is hereby given to said Corn Products Manufacturing Company to amend its said petition by inserting in lieu of the sentence contained in said petition,

“George F. Harding was, and continuously since has been and now is a resident and citizen of the State of California, and a citizen of no other state or country,”

the following:

“George F. Harding was on October 19, 1907, and continuously since has been and now is a citizen of the State of Illinois, and a resident of the City of Chicago in said state, and that he was not on October 19, 1907, and at no time since has been and is not now a citizen of any other state or a resident of any other city.”

## EXHIBIT H.

MOTIONS OF MAY 22, 1909, TO STRIKE "REPLICATION"  
FROM THE FILES, &C.

UNITED STATES CIRCUIT COURT,  
NORTHERN DISTRICT OF ILLINOIS,  
EASTERN DIVISION. }

George F. Harding,  
Complainant,  
vs.  
Standard Oil Company of  
New Jersey *et al.*,  
Defendants. }

In Chancery  
No. 28865.

Now comes the complainant (appearing specially as heretofore), and moves the court, *first*, to set aside any order that may have been entered or directed herein, if any, permitting an amendment to the Removal Petition herein and, *second*, to strike from the files herein the document purporting to be "replication" to the objections and answer of complainant to the petition for leave to amend removal petition in said cause, and for reasons states the following, among others, viz:

First: That it is not a replication at all either in form or in substance, and it was filed under false pretenses, as to its being a replication, without being submitted for examination, or knowledge of its character, or submitted to complainant, or counsel, and without prior leave of court, and without submission and inspection by the court, or parties, and was not made, or presented, until after the hearing had been almost concluded, and after the hearing had been

entirely concluded and arguments concluded on the part of complainant, and within a few hours before the conclusion of a hearing that had occupied nearly three days, and more than that time after the said answer had been filed and the pleadings treated as concluded. Further the said pretended replication puts on the files, and into the record (it may be supposed by the reviewing courts to whom this case may be submitted), a series of alleged documents, or rather portions of the same, garbled and selected in fragments meant wrongfully to affect the mind of the court to the prejudice of complainant, and really untrue, and which may and will, if remaining on the files, be wrongfully and untruthfully used to the injury and prejudice of complainant, and complainant submits that such a paper is in violation of orderly practice and pleading in form and substance, and time of submission, and a piece of trickery to escape investigation and reply, and unworthy and offensive, and hitherto unknown in this court; and such an abuse of sound and orderly practice deserves to be checked at the outset, as both improper, unlawful, and impertinent, and in contempt and gross violation of sound and orderly pleading, and practice, and your complainant will ever pray, etc.

GEORGE F. HARDING,

WM. J. AMMEN,

*Appearing specially for Plaintiff.*

ORDER OF JUNE 12, 1909, DENYING ABOVE MOTION.

George F. Harding

*vs.*

Standard Oil Company of } 28,865.  
New Jersey, *et al.*

The parties appearing again by counsel, the complainant in person and by his solicitors, the defendant, the Corn Products Manufacturing Company, by Mr. Levy Mayer, its solicitor, and now comes on to be further heard the motion of the complainant to set aside and vacate the order heretofore entered, giving leave to amend the petition for removal herein and to strike from the files the so-called "replication" to complainant's objections and answer to the petition for leave to amend said petition for removal, which motion was heard in part and submitted on the 22nd day of May, 1909, and which motion complainant is hereby given leave to file *nunc pro tunc* as of said May 22, 1909, and the court having heard the arguments of counsel and being now fully advised in the premises, it is ordered and adjudged that said motion be, and the same hereby is, overruled and denied.

## EXHIBIT I.

AMENDMENT TO PETITION FOR REMOVAL, FILED JUNE  
14, 1909.

UNITED STATES OF AMERICA,  
NORTHERN DISTRICT OF ILLINOIS, } ss.  
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT  
IN AND FOR THE NORTHERN DISTRICT OF ILLINOIS,  
EASTERN DIVISION THEREOF.

George F. Harding,  
*Complainant,*

*vs.*

Standard Oil Company of New  
Jersey, Corn Products Com-  
pany, Corn Products Refin-  
ing Company, Corn Prod-  
ucts Manufacturing Com-  
pany, Conrad H. Matthies-  
sen, Charles L. Glass, Will-  
iam W. Heaton, Norman B.  
Ream, William J. Calhoun,  
Joy Morton, Benjamin Gra-  
ham, T. B. Wagner, H. C.  
Herget, Thomas P. Kings-  
ford, William C. Sherwood,  
W. H. Nichols, Edward T.  
Bedford and E. P. Wemple,  
*Defendants.*

No. 28,865.

AMENDMENT TO PETITION FOR REMOVAL.

Now comes Corn Products Manufacturing Com-  
pany and by leave of court first had and obtained by  
an order entered herein May 15, 1909, amends its

petition for removal contained in the transcript of the record filed herein by leave of court on November 6, 1907, by inserting in lieu of the sentence contained in the first paragraph of said petition for removal,

“George F. Harding was, and continuously since has been and now is a resident and citizen of the State of California and a citizen of no other state or country,”

the following:

“George F. Harding was on October 19, 1907, and continuously since has been and now is a citizen of the State of Illinois, and a resident of the City of Chicago in said state, and that he was not on October 19, 1907, and at no time since has been and is not now a citizen of any other state or a resident of any other city.”

CORN PRODUCTS MANUFACTURING COMPANY,

J. M. SHEEAN,

By CALHOUN, LYFORD & SHEEAN, and

LEVY MAYER,

*Its Solicitors.*

LEVY MAYER,

*Of Counsel.*

## EXHIBIT J.

## ORDER OF DISMISSAL IN OBEDIENCE TO MANDATE.

UNITED STATES OF AMERICA,  
 NORTHERN DISTRICT OF ILLINOIS, } ss.  
 EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,  
 Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company,	}	In Chancery. No. 28,695.
<i>vs.</i>		
Corn Products Company, Corn Products Refining Company, and others.		

Now come the parties hereto by their respective solicitors herein, and the MANDATE OF THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT, having this day been filed herein, it is hereby ORDERED, ADJUDGED, AND DECREED, pursuant to said mandate, that, on the motion of the said complainant herein, the Bill of Complaint herein, be, and the same is hereby dismissed, without prejudice, and without prejudice to the right of Joy Morton, cross-complainant herein, to prosecute his cross-bill herein, all questions in relation to costs in this court, or in the said United States Circuit Court of Appeals being hereby expressly reserved for future consideration and decision; and it is further hereby ordered, pursuant to said mandate, that the decretal order entered herein by this court under date of

December 13, 1907, and reversed by the said United States Circuit Court of Appeals, as shown in and by said mandate, be, and the same is hereby set aside, vacated, and annulled, and the said petition (or motion) of said Corn Products Refining Company filed herein, on November 4, 1907, is hereby dismissed pursuant to said mandate.



## EXHIBIT K.

ORDER OF JULY 9, 1909, DENYING MOTION TO REMAND,  
AS PRESENTED IN PETITION.

United States Circuit Court  
Northern District of Illinois,  
Eastern Division.

George F. Harding  
*vs.*  
Standard Oil Company of } Chancery No. 28,865.  
New Jersey, *et al.*

Complainant having appeared specially herein, and for the purpose only of moving to remand this suit to the state court on his motion to remand filed herein December 23, 1907, and for the same order, which he claims he was entitled to have made December 26, 1907, when he moved the court to grant said motion of December 23, 1907, William J. Ammen appearing specially for the plaintiff, and Mayer, Meyer & Austrian for defendants.

And it appearing to the court that between December 1, 1907, and December 13, 1907, complainant inquired of the Judge of this court, after its adjournment for the day, whether he would hear a motion to remand this suit to the state court, which inquiry was made without any motion therefor, and not in the presence of, and without the knowledge of the defendants or their attorneys; and complainant was then and there informed by said Judge that he should give notice of any motion he desired to make, and shortly thereafter the said Judge gave direction

to the deputy clerk of this court to inform complainant and his attorney, Mr. Ammen, that the court deemed it proper to postpone any hearing or action on the matter of remanding this suit until a certain motion for injunction staying proceedings by complainant in this suit, then pending in another suit in this court, entitled Chicago Real Estate Loan and Trust Company against Corn Products Company and others, and being No. 28,695 in this court, had been disposed of; and such message was given accordingly. No motion to remand this suit was made until December 23, 1907, when a written motion to remand the same was filed by complainant, and the same was first called to the attention of the court December 26, 1907, after the court had directed the entry of an order in said suit No. 28,695, enjoining complainant from further prosecuting this suit, No. 28,865, or taking any steps or proceedings therein, which injunction order bears date December 13, 1907. Upon the attention of the court being called to said motion to remand, and the court having been requested to pass upon it, and to make an order overruling it, or other order disposing of it, the court refused to hear the motion to remand, or make any order thereon, for the reason that all proceedings by complainant in this suit had been stayed and restrained by said injunction entered in suit No. 28,695.

And it further appearing to the court that by reason of the making of said injunction complainant had no opportunity to have said motion to remand heard until June 30, 1909, when the mandate of the United States Circuit Court of Appeals for the Seventh Circuit was filed in said case No. 28,695, directing the re-

versal of the said injunctinal order of December 13, 1907, so entered December 26, 1907.

Wherefore, upon the record herein, and the facts herein recited, on motion of counsel for defendants, it is ordered by the court that the said motion to remand this suit to the state court be, and the same is, hereby denied.

## EXHIBIT L.

ORDER OF JULY 9, 1909, AS TO TAKING OF PROOF ON  
 ISSUE OF CITIZENSHIP, AND DENYING LEAVE TO FILE  
 PETITION PRESENTED JUNE 30, 1909.

In the Circuit Court of the United States,  
 Northern District of Illinois,  
 Eastern Division.

Friday, July 9, 1909.

Present: Honorable Arthur L. Sanborn, District

Judge.

George F. Harding

*vs.*

Standard Oil Company, *et al.*

} 28,865.

This cause coming on to be further heard upon the question of the citizenship of said George F. Harding, the complainant, appearing in person and by his solicitor, William J. Ammen, the defendants being represented by Mr. Alfred Austrian, of Messrs. Mayer, Meyer & Austrian, and the court being fully advised,

IT IS ORDERED that said defendants close their proofs on said issue by September 15th next, complainant to take his proofs by the 15th of November next; the defendants to have thirty days thereafter for rebuttal, or thirty days after the complainant shall have notified said defendants that said complainant's testimony had been closed; and the testimony of said Harding shall be taken in open court on the hearing of said issue.

The motion of the complainant for leave to file petition offered is hereby denied.

United States of America,  
 Northern District of Illinois, } ss.  
 Eastern Division.

In the United States Circuit Court, in and for the  
 Northern District of Illinois, Eastern  
 Division thereof.

George F. Harding,	} In Chancery, No. 28865.
<i>Complainant,</i>	
<i>vs.</i>	
Standard Oil Company of New Jersey,	
<i>et al.,</i>	} Defendants.

ANSWER TO REMOVAL PETITION AS AMENDED.

Now comes the said complainant, George F. Harding, appearing specially herein, as heretofore, and protesting and objecting as in his motion to remand filed herein on December 23, 1907, and as in his objections and answer filed herein to the petition or motion to amend the removal petition herein, and as done on the hearing of the said petition for leave to amend, and otherwise of record herein, that this court is wholly without jurisdiction of or in this cause, or over or against this complainant, and still insisting that this court has not and never had any jurisdiction of or in this cause, or over or against this complainant in said cause, or any authority or power therein except to remand the said cause to the state court, and insisting that the said cause has been improperly and unlawfully removed from the state court to this court, and improperly and unlawfully held in this court up to the present time, and

saving, and reserving, and preserving all and every of his objections and exceptions to the several orders of this court in this cause, and every of them, and every part thereof, and insisting that the same, including, particularly, the order permitting the amendment to the removal petition in said cause, were and are, respectively, without power or authority or jurisdiction on the part of this court, and, therefore, wholly null and void, and insisting and protesting that the said amendment filed herein, on June 14, 1909, to said removal petition, was and is unauthorized and improper, and that this court has no jurisdiction of or in this cause, or of or over this complainant, notwithstanding the filing of the said amendment by leave of court herein, and, particularly, saving and reserving and preserving to this complainant his objections and contentions set forth in his petition presented to this court in this cause on June 30, 1909, and insisting that the prayer thereof should then have been and should now be granted by this court, and insisting further that this court should not have allowed the said petition for leave to amend the removal petition in this cause, and granted such leave at any time, and particularly before the filing of the mandate of the United States Court of Appeals in the suit in chancery No. 28,695, in this court, which mandate was not filed in said cause until June 29, 1909, and had been stayed up to May 19th, on motion of appellee therein, this complainant saving and reserving and preserving all and every of his rights and contentions, aforesaid, and to the end that such proceedings may be had in this cause as will clear away all obstacles against

this complainant's applying to the Supreme Court of the United States for a mandamus to compel a remand of this cause to the state court, for answer to the said petition for removal as amended herein on June 14, 1909, this complainant, George F. Harding, represents and states and shows to the court that it is not true that this complainant, George F. Harding was, on October 19, 1907, or at any time since that date, a citizen and resident of the State of Illinois, or a citizen and resident of the City of Chicago, in said State of Illinois, and it is not true that said George F. Harding was not on October 19, 1907, or at any time since that date, a citizen or resident of any other state or city, but, on the contrary, this complainant, George F. Harding, represents and states and shows to the court, that this complainant, George F. Harding, was, on October 19, 1907, and continuously since has been and now is a citizen of the State of California, and a resident of the said State of California, and was not on October 19, 1907, and at no time since that date has been, and is not now a citizen or resident of any other state or country than the said State of California.

And by way of further answer to the said removal petition as thus amended, this defendant represents, and states, and shows to the court that the averments in the said removal petition, as thus amended, namely, the averments that "George F. Harding was on October 19, 1907, and continuously since has been and now is a citizen of the State of Illinois, and a resident of the City of Chicago in said state, and that he was not on October 19, 1907, and at no time since

has been and is not now a citizen of any other state or a resident of any other city," were and are entirely untrue.

And this complainant prays that there may be a speedy hearing and decision of such issue of citizenship, and a remand of this cause to the state court by the order of this court, and particularly, that such action may be taken as will enable this complainant to apply promptly to the Supreme Court of the United States, if need be, for a mandamus to compel a remand of this cause to the state court, and the defendants herein thus prevented from further delaying and defeating justice herein, as has been done by them wrongfully and unlawfully ever since the beginning of this suit; and this answer is presented by this complainant, and a trial of the said issue of citizenship requested and demanded by this complainant, without intending, in any way, or to any extent to waive his said motion to remand heretofore filed herein, or any part thereof or his rights by reason of any decision or action of court thereupon and without intending, in any way, or to any extent to waive his said petition presented to this court in this cause on June 30, 1909, and solely in order that this complainant may speedily obtain a remand of this cause to the state court, this court having heretofore refused a hearing thereof, and having even enjoined the bringing on of the same to be heard, and the mandate showing a reversal of such injunction having been filed, as aforesaid, on June 29, 1909, thus leaving this complainant free, for the first time, to move for a remand of this cause to the state court and this answer is presented without waiving, or intend-



ing to waive, any of the protests or objections of this complainant against the said amendment to the said removal petition by leave of this court granted in face of the said injunction then in full force, and against the other objections and protests urged by or in behalf of this complainant against the granting of the same; and this complainant will ever pray, etc.

GEORGE F. HARDING,  
*Complainant.*

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

George F. Harding, being first duly sworn, states on his oath that he is the complainant in the above entitled cause whose name is subscribed to the foregoing answer; that he has read the said answer subscribed by him and knows the contents thereof and that the same, and the matters and things therein stated, are true of his own knowledge, except as to such matters as are therein stated to be on information and belief, and as to those matters he believes them to be true. Further affiant saith not.

Dated this 1st day of July, A. D. 1909.

GEORGE F. HARDING.

Subscribed and sworn to before  
me this 1st day of July, A. D. 1909.

OSCAR SCHUELER,  
(Seal) *Notary Public in and for Cook  
County, Illinois.*

GEORGE F. HARDING,  
WM. J. AMMEN,  
*Solicitor for Complainant.*

(Endorsed)  
Filed in open Court  
July 9, 1909,  
H. S. STODDARD, *Clerk.*

## EXHIBIT N.

ORDER OF OCTOBER 30, 1909, AS TO TESTIMONY OF WIT-  
NESSES RESIDING IN ILLINOIS TO BE TAKEN  
IN OPEN COURT, ETC.

George F. Harding  
vs.  
Standard Oil Company *et al.* } 28,865.

This cause coming on to be further heard upon the question of the citizenship of said George F. Harding, the complainant appearing in person and by his solicitor, William J. Ammen, and the defendant, Corn Products Manufacturing Company, being represented by Levy Mayer, and the court being fully advised,

It is ORDERED that hereafter all the testimony of all witnesses resident in the State of Illinois, both on behalf of complainant and defendant, shall be taken in open court herein at such times as may be designated by the court, including the testimony of the complainant, and that either party may produce in open court other witnesses residing outside the State of Illinois; that either party may re-examine or continue the cross examination or cross examine any witness heretofore produced by the other side, living in Illinois; that the evidence heretofore taken by deposition on behalf of complainant and said defendant may be used and read on the hearing of said issue; that the testimony of other witnesses residing outside the State of Illinois may be taken on behalf of either complainant or said defendant, within the times heretofore fixed by the order entered herein on July 9, 1909, said defendant being further authorized to take testimony of witnesses in rebuttal in California, at the conclusion of the taking of testimony in California on behalf of complainant.

## EXHIBIT O.

MOTION (FILED JANUARY 26, 1910, AND STRICKEN FROM FILES BY ORDER OF FEBRUARY 12, 1910) TO VACATE AND SET ASIDE ORDER ENTERED JULY 9, 1909, DENYING MOTION TO REMAND, AND AFFIDAVITS IN SUPPORT THEREOF ATTACHED THERETO AND FILED THEREWITH.

United States of America  
Northern District of Illinois,  
Eastern Division. } ss.

IN THE

UNITED STATES CIRCUIT COURT,  
In and for the Northern District of Illinois,  
Eastern Division.

George F. Harding,  
Complainant,  
vs.  
Standard Oil Company of  
New Jersey *et al.*,  
Defendants. } In Chancery,  
No. 28865.

Now comes the complainant in the above entitled cause and moves the court to vacate and set aside the order entered in this cause on July 9, 1909, denying, or purporting to deny, a motion alleged in said order to have been then made by said complainant to remand this cause to the State Court, the said complainant never having made on that date the said alleged motion denied, or purporting to be denied, by said order, and in support of said motion, said complainant submits his affidavit herewith entitled in

said cause, together with other proof to be submitted on the hearing of this motion.

GEO. F. HARDING,  
WM. J. AMMEN,  
*Solicitors for Complainant.*

United States of America, }  
Northern District of Illinois, } ss.  
Eastern Division.

IN THE

UNITED STATES CIRCUIT COURT,  
In and for the Northern District of Illinois,  
Eastern Division.

George F. Harding, }  
Complainant, }  
vs. } In Chancery,  
Standard Oil Company of } No. 28865.  
New Jersey *et al.*, }  
Defendants.

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

George F. Harding, being first duly sworn, states on his oath that he is the complainant in the above entitled cause, and that he never made on July 9, 1909, any motion to remand this cause to the State Court, as recited in the order of July 9, 1909, and purporting to be denied by that order, but, on the contrary, this complainant then expressly refused and declined to make or adopt any such motion.

Affiant further states that, on June 30, 1909, he presented to this court his petition entitled in said cause, duly sworn to by him on June 29, 1909, and

then offered the said sworn petition, together with other evidence, in support of his motion and prayer set forth in said petition, which said petition is presented with this affidavit, and the same is hereby referred to and made a part hereof, and this affiant then moved the court for leave to file the said petition in said cause, and that the prayer thereof in relation to the remanding of said cause to the State Court be granted upon the grounds and reasons and basis set forth in said petition, to all of which Levy Mayer, as solicitor for defendant in said cause, objected. Whereupon the court announced from the bench that said petition would be examined by the court and disposed of by an order of court to be entered on a later date in said cause, and thereupon the said petition was delivered to the Judge of said court, the Honorable Arthur L. Sanborn, for the purposes aforesaid.

Affiant further states that on several occasions between June 30, 1909, and July 9, 1909, the matter of the said petition was again called to the attention of the said court, by this affiant, in open court, the said Levy Mayer being present as solicitor for defendant before the said Judge, on every of such occasions; and on July 9, 1909, in open court, the said Levy Mayer being then present again, as solicitor for defendant in said cause, the said petition was again presented to said Judge, and this affiant then again moved for leave to file the same, and that the said prayer thereof be granted by the court, and the court thereupon denied to said complainant leave to file the said petition, as recited in another order of July

9, 1909, relating to the taking of depositions in said cause.

This affiant further states that the said petition of this affiant was thus disposed of by the court on July 9, 1909, subject only to the right of review on a petition for mandamus by said complainant or otherwise; but, notwithstanding this fact, the said court, thereupon, of its own motion, and against the objection of this complainant, entered its said order of July 9, 1909, denying, or purporting to deny, an alleged motion then made by complainant to remand said cause to the State Court, but, in truth and in fact, this complainant did not make or present any such motion, and this complainant then and there objected and protested that the only motion made by this complainant was that contained in and set forth in said petition, and said order of July 9, 1909, reciting said alleged motion to remand, was then made and entered by the court, against the objections of this affiant, then fully stated to the court by this affiant, namely, that this affiant had not made such alleged motion recited in the said order, and that material statements, or findings, contained in said order, were contrary to the truth, and to the proof then before the court, and, particularly, that said order of July 9, 1909, contained a finding and recital in conflict with the opinion and judgment of the United States Court of Appeals in and for the Seventh Circuit, and impliedly contrary to the holding of the Supreme Court of the United States (in its denial of the petition for *certiorari*) in relation to the date when the injunction order reversed by the said Court of Appeals was actually entered by this court, and

this affiant then and there further contended that other denials and findings in the said order of July 9, 1909, were contrary to the truth and contrary to the proof then before this court.

This affiant further states that the statements contained in the said order of July 9, 1909, touching motion to remand, are untrue, and calculated to mislead any court authorized to review the said order, particularly the recital therein that this affiant's motion to remand this cause to the State Court "was *first* called to the attention of the court Dec. JUNCTION ORDER BEARS DATE DEC. 13, 1907," the an order in said suit No. 28695 enjoining complainant from further prosecuting this suit, No. 28865, or taking any steps or proceedings therein, WHICH INJUNCTION ORDER BEARS DATE DECEMBER 13, 1907," the essential meaning and effect of said recital and finding being that said injunction order was actually entered by this court on December 13, 1907, while, in fact, the said injunction order was actually entered on December 26, 1907, as shown by the record before this court in this cause, and as held and declared in and by the said Court of Appeals in its opinion and judgment reversing the said injunction order, and, in truth, the said motion to remand this cause, filed herein on December 23, 1907, was actually presented to this court by this affiant on December 26, 1907, *before* the entry of said injunction order, and, in addition, this affiant had repeatedly requested this court both on and before December 13, 1907, to hear a motion to be made by this affiant to remand this cause to the State Court, all of which requests were re-

fused by this court, as shown by the record and proof before this court.

Affiant further states that the said order of July 9, 1909, relating to motion to remand, not only contradicts the said findings and opinion of the said Court of Appeals, adhered to by that court, despite the argument and briefs of the appellee therein, and its petition for rehearing therein, in relation to the date when the said injunction order was entered by this court, but, in addition, the petition for *certiorari* presented by said appellee to said U. S. Supreme Court to review said judgment of the said Court of Appeals, and, particularly the printed suggestions filed by said petitioner in support of the said petition for *certiorari*, fully show that this very question of the date of the entry of the said injunction order had been so determined by the said Court of Appeals, and adhered to after said petition for rehearing therein, and this affiant presents with this affidavit one of the printed copies of the said petition for rehearing, and one of the printed copies of the said petition for *certiorari*, and one of the printed copies of the said suggestions in support of the said petition for *certiorari*, all of which are made exhibits to this affidavit and the same are made a part hereof.

Affiant further states that his motion to remand this cause was filed herein on December 23, 1907, and the same is disregarded and contradicted and denied by the said order of July 9, 1909, contrary to the said opinion and judgment of the said Court of Appeals.

Affiant further states that the appellee, in the said appeal to the said Court of Appeals, namely, the



Corn Products Refining Company, is the real and principal defendant in this cause, the said defendant, Corn Products Manufacturing Company being only the agent and tool of the said Corn Products Refining Company as shown by the amended bill of complaint in this cause, and as shown by the affidavit of Bedford filed by said defendants on November 11, 1907, on the hearing of the petition of November 4, 1907, in said Real Estate Company case, and the said order of July 9, 1909, untruthfully declares that this affiant's said motion to remand filed herein on December 23, 1907, and presented to this court on December 26, 1907, was actually made and presented after the said injunction order was actually entered by this court, thus contradicting the holding of the said Court of Appeals and the entire record and proof before this court in relation to that subject.

Affiant further states that on April 13, 1909, said Mayer, as solicitor for said appellee in the said Court of Appeals, moved that court to modify its judgment, and in support of such motion filed therein his printed brief and suggestions, a copy of which is presented to the court with this affidavit and the same is hereby made an exhibit hereto and a part hereof, half of the said brief, namely, pages 12-24, being given to the discussion of the contention that the said Court of Appeals in its opinion and judgment in said cause had acted upon a mistake as to the date of the actual entry of the said injunction order, which motion to modify said judgment was denied by the said Court of Appeals on April 21,

1909, as already shown by the proof before this court in this cause.

Further affiant saith not.

GEORGE F. HARDING.

Subscribed and sworn to before me,  
this 26th day of January, A. D. 1910.

ALICE WILLNER,

(SEAL)

Notary Public.

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

William J. Ammen, being first duly sworn, states on his oath that he is one of the solicitors of record for the complainant in the above entitled cause; that he has read the foregoing affidavit of said complainant, George F. Harding, and knows the contents thereof; and that the said affidavit of said Harding, and the matters and things therein stated are true of this affiant's own knowledge in so far as the same relate to the proceeding of June and July, 1909, in said cause.

Further affiant saith not.

WM J. AMMEN.

Subscribed and sworn to before me,  
this 26th day of January, A. D. 1910.

ALICE WILLNER,

(SEAL)

Notary Public.

## EXHIBIT P.

ORDER OF FEBRUARY 12, 1910, DENYING MOTION OF  
COMPLAINANT TO TAKE FURTHER TESTIMONY UPON  
THE ISSUE OF CITIZENSHIP BY DEPOSITION OR BE-  
FORE A NOTARY PUBLIC IN CHICAGO, ILLINOIS, AND  
DENYING MOTION TO SET ASIDE ORDER OF JULY 9,  
1909, DENYING MOTION TO REMAND.

George F. Harding,	}	28,865.
<i>vs.</i>		
Standard Oil Company of New		
Jersey <i>et al.</i>		

The motions of the complainant to set aside the order entered herein July 9, 1909, denying a motion to remand and to permit the complainant to take certain evidence on the issue of citizenship by deposition, in the State of Illinois, instead of having the same taken at the hearing as heretofore ordered, came on to be heard on the 26th day of January, 1910, upon the record herein and the arguments of counsel, and the motion to set aside the order of July 9th was further heard on the second day of February, 1910.

It is thereupon ordered that the motion of complainant to take further testimony upon the issues of citizenship, by deposition, or before a notary public in Chicago, Illinois, be, and the same is hereby denied.

And it appearing to the court that the application to remand of June 30, 1909, recited in and denied by the order of July 9, 1909, was the one made in the petition of June 29, 1909, contained in the certificate

of evidence, dated November 19, 1909, but which petition was not permitted to be filed.

And it further appearing that all the steps taken by complainant up to and including the 26th day of December, 1907, in respect to remanding this suit are fully stated in the certificate of evidence made by Kenesaw M. Landis, a Judge of this court, in the suit of *Chicago Real Estate Loan & Trust Company against Corn Products Refining Company and others*, which is part of the aforesaid certificate of evidence in this suit.

It is thereupon ORDERED upon the record herein, that the motion of January 11, 1910, noticed for January 14, 1910, and heard the 26th of January, 1910, to set aside the order of July 9, 1909, is denied upon the grounds above stated.

And it is further ordered that the additional motion of complainant to vacate and set aside said order of July 9, 1909, together with the affidavit of George F. Harding, accompanying the same, purporting to have been filed January 26, 1910, are struck from the files because entirely unnecessary to preserve the rights and interests of the complainant herein.

The motion to complete the certificate of evidence and to suppress and strike out certain parts of depositions or exhibits were not brought on or heard, and are denied without prejudice.

EXHIBIT Q.

OPINION FILED OCTOBER 25, 1910, DECIDING ISSUE OF  
CITIZENSHIP.

Circuit Court of the United States,  
Northern District of Illinois,  
Eastern Division.

George F. Harding,  
Complainant, }  
vs. } Equity, No. 28,865.  
Standard Oil Company *et al.* }

Hearing closed and case submitted without argu-  
ment, July 18, 1910. Decided October 25, 1910.

The removal petition was amended pursuant to order granting leave (170 Fed., 650), and an answer filed denying that the complainant was in fact, when this suit was commenced, in October, 1907, a citizen of California, and not of Illinois, as alleged in the amended petition. A large amount of testimony was taken on this special issue, much of it in open court. Defendants sustain the burden of proof.

Mr. Harding, whose citizenship is in question, is over eighty years of age. He is a lawyer of marked ability. From his father he inherited a large amount of real estate in several counties in Illinois, other than Cook, in which the City of Chicago is situated, Winnebago, Lake, Montgomery, McDonough, Iro-

quois, Douglas, Mercer, Peoria, Warren and Henderson counties. Many years ago he located in Chicago, where he practiced law, and acquired considerable real property, also becoming interested in the Firemen's Insurance Company and other business matters.

During the year 1889 his wife left him, and on February 3, 1890, filed her suit for separate maintenance in the Circuit Court for Cook County, Illinois, resulting in a decree for separate maintenance and alimony, July 26, 1897. The case was most vigorously litigated, especially as to the amount and payment of alimony. In its various stages it is reported in 40 Illinois Appeals, 202; 79 App., 590 and 621; 105 App., 363; 120 App., 389; 144 Illinois Supreme Court, 588; 180 Ill., 481 and 592, and 205 Ill., 105. The last proceeding in court was March 27, 1905.

At the commencement of this proceeding Mr. Harding's home was 2536 Indiana avenue, Chicago. He continued to live there until May 15, 1895, when he claims to have removed to San Diego, California, and which he still claims as his residence and domicile. At this date he owned a large amount of real estate in Chicago, heavily incumbered, as well as the country property, was still interested in the insurance company, and was a party to a number of important lawsuits. He says, however, that he had reason to believe that this suit with his wife was practically terminated through a stipulation then recently offered by him to his wife, leaving only the amount of alimony in dispute, and that none of the other litigation would trouble him. He was not in good health and thought a change of his home to

California would be beneficial. He therefore turned over his business office to his son, George F. Harding, Jr., gave him a power of attorney to attend to all his business, terminated his membership in all the Chicago clubs to which he belonged, except the Chicago Athletic Club, parted with all his horses and vehicles, gave up his political activities in Chicago, installed his daughter Beatrice in his house, gave his son authority to sign his name to checks on his bank account, and "generally pulled up all my relations in Chicago, and they never have been restored in any way in any direction."

Before stating the facts on which complainant bases his claim to citizenship in California, the law governing questions of citizenship and residence in the federal courts, should, for the sake of clearness, be stated. It is insisted for Mr. Harding that he became a citizen of California in 1895, and once having changed his domicile it continues until the acquisition by him of another is clearly shown; and although he has not been in California for nearly eight years, yet there is no proof that he has reacquired his former Illinois citizenship, having no home there, and spending no time there except when compelled to do so in litigation to which he is a party, pending there. It is further contended that as the courts of California have held him to be a resident there, his citizenship is established, and the presumption of its continuance. It is necessary, therefore, to state the law as to citizenship or domicile and residence or inhabitancy, and then to recite the facts established by the evidence.

The words citizenship, residence, domicile and in-

habitaney, as used in federal statutes, have often been defined by the United States courts, with almost entire agreement; although the decision of a particular case may vary with its circumstances, and the mental constitution of the judge. The Chinese Tax Cases, 14 Fed., 338, 344. Domicile and citizenship are substantially synonymous terms, in most cases. *Collins v. Ashland*, 112 Fed., 175; *Penfield v. Chesapeake, etc., Co.*, 134 U. S., 351; 10 Sup. Ct., 566; 33 L. Ed., 940, where a person was domiciled in New York but resided in Missouri. "There is a marked distinction between domicile and residence. The term residence simply indicates the place of abode, whether permanent or temporary; domicile denotes a fixed, permanent residence, to which, when absent, one has the intention of returning." *Corel v. Chicago, etc., Co.*, 123 Fed., 452, 454. In *Mitchell v. United States*, 21 Wall., 352; 22 L. Ed., 584, the court say:

" 'Domicile' has been thus defined: 'A residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time.' By the term 'domicile,' in its ordinary acceptance, is meant the place where a person lives and has his home. A place where a person lives is taken to be his domicile until facts adduced establish the contrary. \* \* \* A domicile, once acquired, is presumed to continue until it is shown to have been changed. Where a change of domicile is alleged, the burden of proving it rests upon the person making the allegation. To constitute the new domicile two things are indispensable: First, residence in the new locality; and, second, the intention to remain there. The change cannot be made except *facto et animo*.



Both are alike necessary. Either without the other is insufficient. Mere absence from a fixed home, however long continued, cannot work the change. There must be the animus to change the prior domicile for another. Until the new one is acquired, the old one remains. These principles are axiomatic in the law upon the subject."

"When there has been an actual removal with intent to make a permanent residence, and the acts of the party correspond with the purpose, the change of domicile is completed, and the law forces upon him the character of a citizen of the state where he has chosen his domicile, although he may have formerly declared that he nevertheless considered himself a citizen of the state he has left." *Pacific, etc., Co. v. Tompkins*, 101 Fed., 539; 41 C. C. A., 488.

Citizenship implies much more than residence. It carries the idea of connection or identification with the state, and a participation in its functions. Daniel, J., in *Dred Scot v. Sanford*, 19 How., 476; 15 L. Ed., 691. It applies to a person possessing social and political rights, and sustaining social, political and moral obligations. Daniel, J., dissenting, in *Rundle v. Delaware, etc., Co.*, 14 How., 80; 14 L. Ed., 335. In the Constitution and laws of the United States the term is generally, if not always, used in a political sense to designate one who has the rights and privileges of a citizen of a state or of the United States. *Baldwin v. Franks*, 120 U. S., 678; 7 Sup. Ct., 656; 30 L. Ed., 766. A person may be a citizen of a state but not of the United States; as, an alien who has declared his intention to become a citizen, and who is by local law entitled to vote in

the state of his residence, and there exercise all other local functions of local citizenship, such as holding office, right to poor relief, etc., but who is not a citizen of the United States. Taney, C. J., in *Dred Scot v. Sanford*, 19 How., 405; 15 L. Ed., 691; *Slaughter House Cases*, 16 Wall., 74; 21 L. Ed., 394. An allegation of residence in a state does not show citizenship therein. *Continental Insurance Co. v. Rhoades*, 119 U. S., 237; 7 Sup. Ct., 193; 34 L. Ed., 380; *Everhart v. Huntsville College*, 120 U. S., 223; 30 L. Ed., 623; 7 Sup. Ct., 555; *Denny v. Pironi*, 141 U. S., 121; 11 Sup. Ct., 966; 35 L. Ed., 657; *Shaw v. Quincey Min. Co.*, 145 U. S., 444; 12 Sup. Ct., 935; 36 L. Ed., 768; *Bicycle Stepladder Co. v. Gordon*, 57 Fed., 529, Jenkins, C. J.; *De La Montanya v. De La Montanya*, 158 Fed., 117. Change of citizenship is not shown unless residence in the old state is in good faith given up, and permanent residence in the new one acquired. *Chicago, etc., Co. v. Ohle*, 117 U. S., 123; 29 L. Ed., 837; 6 Sup. Ct., 632.

The distinction between citizenship and residence is illustrated by the cases cited by the Supreme Court in *Galveston, etc., Co. v. Gonzales*, 151 U. S., 496; 14 Sup. Ct., 401; 38 L. Ed., 248; *Piquet v. Swan*, 5 Mason, 35; Fed. Cas. No. 11,134, is one of them, in which Judge Story held that a citizen of Massachusetts, residing in France, was not an inhabitant of the United States. Judge Story said:

“A person might be an inhabitant without being a citizen; and a citizen might not be an inhabitant, though he retain his citizenship. Alienage or citizenship is one thing; and inhabitancy, by which I understand local residence, *animo manendi*, quite another.”

Another of the cases cited approvingly is *Jopp v. Wood*, 34 Beavan, 88, where twenty-five years' absence and doing business in India did not change the domicile of a Scotchman. Another is *In re Capdeville*, 2 H. & C., 985, as to a Frenchman who had resided and done business in England twenty-nine years without losing his French domicile.

"Citizenship, as used in the law under consideration (the jurisdiction statute of 1875), means residence with intention of remaining permanently at that place. A man may reside in a state for an indefinite period of time without becoming a citizen." *Winn v. Gilmer*, 27 Fed., 817. The domicile and citizenship were held to have been changed.

A person cannot be a resident of two states at the same time. Residence is the act of residing, abiding or dwelling in a place for some continuance of time, the act or state of being seated or settled in a place. "It may happen that one may have two places of residence, in one of which he resides during one portion of the year, in the other during the remaining portion. In such case the place at which he happens to be constitutes his residence so long as he is there, and ceases to be such as soon as he leaves it for the other place." Baker, J., in *Zeibert v. Hunt*, 108 Fed., 449, U. S. C. C., Dist. of Indiana. By this rule a citizen of Illinois might have his summer residence at his summer home at Lake Geneva, Wisconsin, and his winter residence at his winter home in Florida or Pasadena. "The term residence is flexible, and may be given a restricted or enlarged meaning considering the connection in which it is used. It involves, however, some idea at least of

permanency and fixed intention to remain." *Willingham v. Swift & Co.*, 165 Fed., 223. An allegation of residence in one state implies non-residence in another. *Zebert v. Hunt*; *Lawrence v. Southern Pac. R. Co.*, 165 Fed., 241.

Inhabitaney and residence are synonymous. *Bicycle Stepladder Co. v. Gordon*, 57 Fed., 529. "An inhabitant of a place is one who ordinarily is personally present there; not merely *in itinere*, but as a resident and dweller therein." *Holmes v. R. Co.*, 5 Fed., 523.

In *Sharon v. Hill*, 26 Fed., 337, the distinction between citizenship and residence is discussed at some length by Judge Deady. Among other things he said:

" 'Citizenship' and 'residence,' as has often been declared by the courts, are not controvertible terms. *Parker v. Overman*, 18 How., 141 (15 L. Ed., 318); *Robinson v. Cease*, 97 U. S., 648 (24 L. Ed., 1057); *Grace v. American Cent. Ins. Co.*, 109 U. S., 283 (3 Sup. Ct., 207; 27 L. Ed., 932); *Prentiss v. Barton*, 1 Brock., 389 (Fed. Cas. No. 11,384). Citizenship is a status or condition, and is the result of both act and intent. An adult person cannot become a citizen of a state by simply intending to, nor does anyone become such citizen by mere residence. The residence and the intent must coexist and correspond; and though, under ordinary circumstances, the former may be sufficient evidence of the latter, it is not conclusive, and the contrary may always be shown; and when the question of citizenship turns on the intention with which a person has resided in a particular state, his own testimony, under ordinary circumstances, is entitled to great weight on the point."

It was admitted by the plaintiff in the *Sharon* case that he had resided in California for a long time, but he testified that he never intended to become a citizen of California or cease to be a citizen of Nevada. It was held that he was a resident of the former and citizen of the latter state. The following decisions approve the rule of the *Sharon* case: *M'Donald v. Salem, etc., Co.*, 31 Fed., 577; *Collins v. Ashland, supra*; *Eisele v. Oddie*, 128 Fed., 941.

The declarations or statements of a person of his intention are not conclusive. *Winn v. Gilmer*, 27 Fed., 817; *Rucker v. Bolles*, 80 Fed., 504; 25 C. C. A., 600; *Alabama, etc., Co. v. Carroll*, 84 Fed., 780; 28 C. C. A., 207; *Corel v. Chicago, etc., Co.*, 123 Fed., 452. "On a change of domicile from one state to another, citizenship may depend upon the intention of the individual. But this intention may be more satisfactorily shown by acts than declarations. An exercise of the right of suffrage is conclusive on the subject." (*Shelton v. Tiffin*, 6 How., 185; 12 L. Ed., 397.)

Upon the question of domicile, usually co-extensive in meaning with citizenship, the Supreme Court in *Mitchell v. United States*, 21 Wall., 353; 22 L. Ed., 584, say:

"Among the circumstances usually relied upon to establish the *animus manendi* are declarations of the party, the exercise of political rights, the payment of personal taxes, a house of residence, and a place of business."

In many of the state courts residence and citizenship are regarded as convertible terms, but the

federal courts have adopted a different rule, as clearly shown by the cases cited.

A change of citizenship, then, involves three elements, the intention to make the change, actual removal accompanied by permanent residence in the new home with the intention of removing there permanently (*animus manendi*), and the intention of returning there whenever absent (*animus revertendi*). In this case the intention to make the change is supported by repeated and long continued declarations by Mr. Harding, although his acts raise doubt even on this element; while his actual removal, permanent residence, in California, *animus manendi* and *animus revertendi* relating to California find very little support in the proofs.

Concerning Mr. Harding's declarations of intention to change his residence from Chicago to San Diego, and his most positive testimony, there is ample proof in support of such intent. It is true that quite a number of written instruments were put in evidence, signed by him May 15, 1895, reciting his residence in Chicago. But a large number recite his residence in San Diego. There is also some testimony, as well as certain circumstances, which make it possible to suppose that he desired to obtain residence in California, so that he might there obtain a divorce and defeat his wife's alimony. He strenuously denies this, and even if it were clearly shown, would not prevent his acquiring another citizenship, if he actually did remove and make his permanent home in San Diego.

Mr. Harding had a sister, Mrs. Mary Schneider, living in San Diego. She lived in a small house,

which she had owned for some years. They had had very little social intercourse for a long time. He had his wife's law suit and several large cases on his hands, but seems to have thought he could get rid of this litigation, or that it would not seriously trouble him. This proved to be a great mistake. He was not in good health, suffering from a very painful and annoying ailment common to elderly men, not alarming in its nature, but which grew worse until he was finally relieved by an operation, performed in Paris in 1905. His real estate in Chicago was mortgaged for all it was worth, and he wished to turn it over to his son, George, who had shown evidence of business ability, and who has since made good. His farm property was in the hands of competent agents, so that it could be safely left to them. So, as he testifies, he proposed to change his residence to San Diego, attracted by its wonderful climate, where he could be out of doors all the year and escape the rigors of winter in Chicago. He was also free from family entanglement, so far as a change of residence was concerned. His wife lived apart from him. His children had reached maturity, at least those who adhered to his cause in the family dispute. Two boys, George and Abner, and one daughter, Beatrice, sided with him, the others with the mother. So far as his intention to change his residence is concerned, therefore, it is supported by the evidence. We shall see, however, to what extent he was able to carry out that intent.

The evidence of the fact of removal is not as clear as that of intent, but more so than that relat-

ing to the acquisition of a new permanent home. He left Beatrice in charge of his home at 2536 Indiana avenue, Chicago. George also lived there, he not having married until December, 1896, and living at other places until 1902, when Beatrice left the home upon her own marriage. Mr. Harding disposed of his horses and carriages and gave up all his clubs in Chicago, except the Chicago Athletic Club, of which he is still a member. He went to San Diego in the fore part of May, 1895, as an ordinary traveler would go, taking along nothing but what he might need on a journey.

His sister was much surprised to see him, but readily fell in with his idea of removing to San Diego. He repeatedly declared that he had come there to live. He says his sister proposed to give him a lease of her house furnished, she to be the housekeeper, and live with her daughter and grandson. Accordingly a lease was made in May, 1895, running a year, at a rental of twenty-five dollars month. The paper was not found, but was referred to in Mr. Harding's testimony in his California divorce suit, tried in 1901. He says he paid rent for awhile. Mrs. Schneider left San Diego for Denver in the fall of 1897, renting the place to others. Mr. Harding was assigned a room in the house.

Shortly after going to San Diego the pending litigation in Chicago assumed a condition of great activity, requiring his immediate presence there. How much time he spent in San Diego for the next six years, or until he left it never to return, is in much doubt. There is evidence tending to show that he was in Chicago some part of each and every



month after May in 1895, every month in 1896, except October, every month in 1897 except March, every month in 1898, except March and November, also in January, February, March, April, July, September, November and December, 1899, and every month but December in 1900. It is insisted that he was not in San Diego more often or continuously because of the great activity of his Chicago law suits, making it impossible to carry out his intention to remove, and thus his actual residence in San Diego is not affected by these necessary absences. On the contrary, the facts show that he found it impossible to make a permanent home away from Chicago.

The most significant evidence in the case, however, is that he never in any way, or to any degree, became identified with San Diego as a city community. He had nothing in common with its inhabitants. He never voted there, paid taxes, was assessed for taxation, held real or personal property, took any interest in municipal or political affairs, nor did his name ever appear in a city directory or telephone book. To say he ever became a citizen there, implying civil and political relations, would require a great stretch of imagination. A temporary resident he may possibly have been, but never domiciled as a citizen, so as to afford any presumption of continuing status. Some thirteen hundred envelopes were in evidence, representing letters from him when absent from Chicago, running from 1900 to 1909. Of these only thirty-eight were from California, three from May 28 to June 6, 1900; twenty-nine from January 16 to February 18, 1901, while he was at the Coronado Hotel for the temporary pur-

pose of attending his divorce suit and a suit brought against him for attorney's fees, and six from January 13 to 18, 1902, while he was on a pleasure trip to Los Angeles. The evidence of permanent residence in California, *animo manendi et revertendi*, is so slight as to be hardly worth serious consideration. Letters were written earlier, while he was visiting his sister, which have disappeared with the lapse of time, but the proof as a whole falls far short of showing citizenship in California.

As to *animus revertendi*, the proofs show that when he was absent from Chicago and San Diego he generally returned to Chicago, not San Diego. This is universally true since the year 1900. A few of the envelopes sent from California direct a return to Hotel Coronado, but most of them to Chicago. I believe not one of them sent from other places directs return to any place in California. For the last nine years there is not a hint or intimation in his proofs, other than declarations, that Mr. Harding had a home in San Diego, or ever contemplated going there, even for a pleasure trip.

To show the difficulties besetting the case for complainant on the question of citizenship, the following is cited from his cross examination:

"Q. Give the court the street and number and city in California where you now live. A. My last stay in California—

"Mr. Mayer: I object. Answer my question.

"The Court: Answer the question if you can.

"A. I should say that my home in California would be—"

"Mr. Mayer: Answer.

"The Court: Yes. Answer the question.

"Mr. Ammen: I object to any such—

"The Court: Answer the question, or if you cannot answer it, say so.

"A. It will have to be more specific, in order to answer it. I will have to answer fully, and I desire to answer fully, in saying that I cannot.

"The Court: You cannot answer that question.

"A. Not that way, no. I—

"Mr. Mayer: I object.

"A. Well, I have the right, the right of a witness to answer fully, when he says he can not tell.

"Q. Give the court the street and number of the house, and the city in California where you lived when you were last in California. A. Always in the City of San Diego, and when I was there I either resided at some hotel, and chiefly, I think, at the Hotel Coronado, in said city. If you refer—I was also at the other hotels in California upon journeys there, particularly at Los Angeles and Pasadena."

The California divorce suit was begun by complainant against his wife August 31, 1897, about a month after the decree of separate maintenance in Illinois. In the bill he alleges residence in California for a year, and in San Diego for three months, and desertion by his wife. An answer was filed on behalf of Mrs. Harding, denying his residence and the alleged desertion, and setting up the separate maintenance decree as a bar. Mr. Harding says the divorce suit was brought as a defensive measure. "I never dreamed of anything else, and so announced it. There was nothing done for four

years, you see, except service." It was tried January 14-30, 1901, and a decree in his favor rendered January 31, 1901. He testified to his residence in California from 1895, and referred to the lease from his sister of her home in San Diego, but stated that she had left the city in 1897, and that he had lived at hotels in San Diego and other California cities. It appears that Mrs. Schneider sold the San Diego house January 12, 1899, and that her death occurred December 11th of the same year. The divorce decree was affirmed by the California Supreme Court October 17, 1903, and its decree reversed by the United States Supreme Court May 17, 1905, on the ground that the California court refused credit to the separate maintenance decree; the divorce decree was finally reversed by the California court, pursuant to the federal mandate, January 2, 1906.

The courts of California were not required to hold that Mr. Harding was a citizen under the federal rules in order to sustain their jurisdiction. Western states are liberal in their construction in such cases, in favor of their own jurisdiction, and their judgments are not always worthy of acceptance. He may possibly have gained a temporary residence in San Diego in 1896 or 1897, although the evidence does not indicate even that, much less that he ever acquired a new citizenship.

It is not necessary to state the substance of the voluminous proof as to Mr. Harding's relations to Chicago, but the testimony touches them at every angle, family, club, property, business (law suits) and civic or political. It is true that he spent a large portion of his time away from Chicago, at

Boston and nearby places, New York and Washington, but this was done to a considerable extent on account of the Chicago litigation business. These absences were always accompanied by the intention to return to Chicago, and not to San Diego. Most of the proof relating to Chicago tends to show residence there, though many contrary declarations appear.

On the whole, it seems to me beyond the possibility of a doubt that George F. Harding is still a citizen of Illinois. In one part of his cross examination, when talking rapidly and under stress, he unconsciously referred to the Indiana avenue house as his home, although the title had been transferred to a corporation controlled by his sons, and by various dummy conveyances passed to others, controlled by George F. Harding, Jr., and occupied by him. Through two general deeds made by complainant in 1896 and 1897, purporting to transfer all his property to the same corporation, one recorded in Cook County and the other in Warren County, the impression was created that he had parted with all his lands in Illinois. As a matter of fact, however, they were intended to be restricted to the heavily encumbered Cook County property.

An order should be entered finding complainant to have been a citizen of Illinois when the bill was filed in the State Court, October 19, 1907, and denying the motion to remand.

.....  
Judge.

October 25, 1910.

## EXHIBIT R.

NOTICE OF OCTOBER 29, 1910.

United States of America, Northern District of Illinois, Eastern Division Thereof.	}	ss.
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IN THE

CIRCUIT COURT OF THE UNITED STATES,  
In and for the Northern District of Illinois,  
Eastern Division Thereof.

George F. Harding vs. Standard Oil Co., Corn Products Co. <i>et al.</i>	}	No. 28,865.
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*To George F. Harding and Wm. J. Ammen, Solicitors for the Complainant, George F. Harding:*

Take notice that on Wednesday, November 2, 1910, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, before Judge A. L. Sanborn in the Federal court rooms at Chicago, we shall ask that an order be spread of record in the above entitled case, based upon the entry in the minute book of the clerk of said court entered on October 25, 1910, and on the opinion of Judge A. L. Sanborn in the above entitled cause filed herein on October 25, 1910, a copy of which order is herewith served upon you.

LEVY MAYER,

*Solicitor for Corn Products Manufacturing Co.*

Dated, Chicago, Illinois, October 29, 1910.

## EXHIBIT S.

ORDER DATED OCTOBER 25, 1910, FINDS GEORGE F. HARDING TO BE A CITIZEN OF ILLINOIS AND A RESIDENT OF THE CITY OF CHICAGO, AND AGAIN DENIES MOTION TO REMAND TO STATE COURT.

George F. Harding  
vs.  
Standard Oil Co. Corn Products Co. *et al.* } 28,865.

There having heretofore come on to be heard the removal petition, as amended, of the defendant Corn Products Manufacturing Company, the same having been amended by leave of court granted on May 15, 1909, and upon the answer of said complainant, George F. Harding, to said removal petition, as amended, which answer was heretofore filed herein on July 9, 1909, and which answer prays for a trial upon the issue of citizenship raised by said answer, and also prays that there may be a remand of this cause to the State Court, and the court having heretofore heard and considered the evidence and taken the matter under advisement, and being now fully advised in the premises, and the parties being now in court by their respective solicitors, the court finds that said George F. Harding was, on October 19, 1907 (the date when the original bill of complaint herein was filed by him in the Superior Court of Cook County, Illinois), and continuously since has been, and now is, a citizen of the State of Illinois and a resident of the City of Chicago, in said State; and

The court further finds that said George F. Hard-

ing was not, on October 19, 1907, and at no time since has been, and is not now, a citizen or resident of the State of California; and

The court further finds that said complainant, George F. Harding, is not entitled to have this cause remanded to the State Court.

WHEREFORE, the premises considered, it is hereby ORDERED, ADJUDGED AND DECREED that the prayer and motion of said answer of George F. Harding, that this cause be remanded to the Superior Court of Cook County, Illinois, be and the same is hereby overruled and denied; and

It is hereby FURTHER ORDERED, ADJUDGED AND DECREED that the said Corn Products Manufacturing Company is entitled to and shall be paid by said George F. Harding all of the costs incurred by said Corn Products Manufacturing Company in the matter of said hearing upon said removal petition, as amended, and said answer thereto, said costs to be taxed by the Clerk of this court, and that execution issue therefor.



## EXHIBIT T.

PROCEEDINGS OF NOVEMBER 2, 1910, BEFORE JUDGE  
SANBORN.

Wednesday, November 2, 1910, 10 o'clock a. m.

Mr. Mayer: We gave notice to opposing counsel on last Saturday and served upon them a copy of the order which we will ask to have your Honor spread of record pursuant to the decision which was handed down on October 25, and to the minute of your Honor's order entered on that date. A copy of the order as we have drafted it was served on counsel on last Saturday. I will hand your Honor the order as we submit it.

Mr. Ammen: If the court please, that order, as drafted by Mr. Mayer, refers to Mr. Harding's answer filed July 9, 1909, to the removal petition, as amended. Your Honor will perhaps remember that that answer insists that this court never had any jurisdiction of this case except to remand it to the state court, and denies the power of the court to allow the amendment, and insists that the order allowing the amendment was void by reason of its being without power and without jurisdiction, and also insisted that the original motion to remand should be allowed, the motion filed in December, 1907, should be allowed, despite the amendment to the removal petition; and also insisted that the amendment should not have been allowed on the further ground that at the very time it was allowed this case was—the mandate in the other case had not issued from the Court of Appeals, so that the case

was still within the grasp of the injunction in that case.

The answer says: (Here counsel read from the document referred to.)

Now, the order as drafted by Mr. Mayer recites: (Here counsel read from the document referred to.)

You are referring to this answer which I have just read from, your Honor?

The Court: Yes.

Mr. Ammen: Which answer was heretofore filed herein on July 9, 1909. That is the correct date of the filing.

Now, there is no motion except in that answer. I don't want it to appear that we are now making a new motion. In our answer there we carefully endeavored to preserve all our objections to the proceeding and to the jurisdiction of the court. I don't want this record to contain even an implication that we are now making an independent motion outside of that petition, that answer, because we there made our—we endeavored to reserve our rights there, and I think this is all stated, the prayer and motion of said Harding contained in said answer, so as not to show that we are now making an independent motion.

Now, as to the rest of the provision, about costs, I would be glad—— Will your Honor be here again within a few days?

The Court: I haven't any plans about coming again.

Mr. Ammen: Well, your Honor knows Mr. Harding's relationship to this litigation, as attorney and client both, and plaintiff, and I sent him a letter-

gram yesterday with reference to this proposed order. It will take me two or three days to get his suggestions about it, and as there is no emergency that I can see, I would be glad to have time enough to hear from him, at least, and give him his opportunity to make any other suggestions.

Now, as to the provision for costs: We claim, first, without having an opportunity to confer with Mr. Harding—we say that the court has no power to award costs, because it has no jurisdiction at all. That is the same point we urged all the time, and we want to urge that against any order for costs.

We say further, your Honor, that the costs cannot be awarded on an interlocutory matter like this. This is not a final order; it is not a final decree. That would compel us to appeal the case in piecemeal and the Appellate Court would not probably hear it in piecemeal, and more than that, further than that, it provides that the clerk should tax the costs.

Your Honor will see that there will be all sorts of trouble here if the clerk should tax the costs.

There are a great many exhibits, some of them filed and some of them not filed, and if it is done at all, it should be directed in the decree so we will have no trouble with the taxation of the costs. We don't understand that on an interlocutory motion costs can be awarded. How are these costs disposed of? The costs await the final decree in the case. I think your Honor held that in the other case in which you taxed—

The Court: That is pending on appeal, isn't it?

Mr. Ammen: Yes; but in that case we insisted that so far as the parties asking costs were con-

cerned, that that was—that that had been finally disposed of. Your Honor had suggested there that you didn't see any way of awarding costs pending the hearing of the case, but the objection that I did urge here, that I would urge, but I don't know what else Mr. Harding will want to say about it, is that there is a lack of power in addition to this motion being premature.

Mr. Mayer: Taking up the objections in the order in which counsel has submitted them, I can draw no logical inference at all from the reading of his answer as being pertinent, no matter what recitals are contained in his answer, about objecting and excepting, and objecting and excepting. The prayer of his answer was the thing that your Honor was called upon to rule on, and this order is drafted to dispose of the prayer of that answer.

His next objection is that the decretal part of this order provides that the prayer and motion of said George F. Harding, that this cause be remanded to the Superior Court of Cook County, Illinois, be and the same is hereby overruled and denied, that that does not specify what prayer and motion. The recital in this order shows what was heard by your Honor there and it shows that the only thing that was heard was the issue raised by that answer and the prayer of said answer; therefore, there can be, by no possible stretch of reason, any support for the suggestion that this refers to anything except what was contained in the answer.

The Court: Does the answer make the motion to remand?

Mr. Mayer: Yes, your Honor.

The Court: I think it does.

Mr. Ammen: I read from the answer.

The Court: Yes, I think it does. I think I remember that it does; but I want to hear it again. It says so here and also prays that there be a remand of said cause to the State Court.

Mr. Mayer: Yes.

The Court: I guess there is no question about that.

Mr. Mayer: It specifies it expressly, and I used the very language of the prayer, and this complainant prays that there may be a speedy hearing and decision of said issue of citizenship and a remand of this case to the State Court.

The Court: Yes.

Mr. Mayer: And I have used the very language of the answer.

Now, the next suggestion that is made is that there should be no order for costs because it is stated, first, that the court is without jurisdiction. If your premise is correct, then your order will be futile and void, not only as to costs, but all the remainder of the order, if the case is *quorum non judicia*, no matter what your Honor puts in this order, it will be inefficacious, so that the objection that the order for costs goes to the court without jurisdiction or applies to the entire order, and upon that question your Honor has ruled.

There remains, then, the further suggestion that your Honor should not order costs interlocutory, so to speak. This proceeding is final as to this particular hearing. There is nothing more than can be done in this case with reference to the petition, to

our petition for removal, and the answer. It is final.

Your Honor might beat us on the merits, when the case goes to a final hearing, but that would not obviate our right to costs upon this petition and order.

The Court: It is a question of time simply.

Mr. Mayer: Sir?

The Court: It is a question of time simply.

Mr. Mayer: Now, as to the time——

The Court: You would still be entitled to costs, perhaps, and that is dependent upon the circumstances; even if you were defeated on the merits, you would still——

Mr. Mayer: We would be entitled to costs in this proceeding.

The Court: Perhaps so, yes; probably so, but——

Mr. Mayer: In fact so, your Honor.

The Court: But shouldn't the matter all be deferred?

Mr. Mayer: No, your Honor, that is not the practice. The rule is just the other way in equity, and I will read a sample case from *Avery v. Wilson*, 20 Fed., page 856. I read from page 859:

(Here counsel read from said decision.)

That is not only one case, your Honor, but that is the uniform practice.

The Court: That is the uniform practice where the merits of the case are determined, leaving something to be still——

Mr. Mayer: Well, if you will turn to the book you will find that wherever any motion interlocutory is disposed of finally, and great costs have accrued, the court will order the costs to be paid. Now, what is the reason for it? Suppose these costs are not

paid? They are very large, your Honor; they run up into several thousands of dollars. I mean the taxable costs.

The Court: Yes.

Mr. Mayer: Suppose they don't pay them? Your Honor has the right to stay the proceeding until the costs are paid or we otherwise would have a hearing in which evidence covering many thousands of pages have been taken upon an issue raised by them and the disposition of which issue is final, and that disposition then is final in this cause—I mean in this court. We might go on for four or five years more and have tremendous additional cost piled up, and in the end find that we cannot collect these costs and there is no security given for these costs and there is no payment of them. I submit and urge, your Honor, that we are entitled to these costs. It should not be forgotten that they have attempted to collect the costs in the branch proceeding which your Honor knows about.

The Court: Yes.

Mr. Mayer: I think they amounted to six hundred odd dollars.

The Court: Seven hundred dollars; yes.

Mr. Mayer: There is an appeal pending from that proceeding. I don't at this moment desire to anticipate what the court will do or counsel will do in that case. It is set for tomorrow. But, your Honor, we are entitled to costs.

The Court: Set for hearing in the Court of Appeals tomorrow?

Mr. Mayer: In the Court of Appeals.

The Court: Oh, yes.

Mr. Mayer: Now, what we propose to do, if your Honor enters this order, is—and we are entitled to it—is to dismiss that appeal in the Circuit Court of Appeals, and set off as against the costs allowed against us these costs to which we are entitled; otherwise, your Honor, we will be in the position of paying them costs, with the possibility—I won't say probability—of never being able to collect them from the complainant. The complainant in this suit is George F. Harding. You have heard enough in this record as to what has been done or attempted to be done by him with his property, and it would be, I think, manifestly unjust—

The Court: I guess you can get them all right if you are entitled to them. I don't think you will run much risk; your firm will get them.

Mr. Mayer: Well, if your Honor thought—if your Honor had the experience which the other members of the bar in this district have had in endeavoring to collect judgments on executions, I think you would not perhaps be so cheerful about the situation.

Mr. Ammen: There is no necessity for that kind of talk at all.

The Court: I don't think you will have any trouble.

Mr. Mayer: Your Honor, we are entitled to these costs.

The Court: Well, that is a different proposition.

Mr. Mayer: And I appreciate the compliment that my firm would have no trouble; but if your Honor knew as much about the unsuccessful efforts to collect judgments on executions from George F. Harding as I do, I think you would agree with me that



you are giving us more credit than we are properly entitled to.

Mr. Ammen: There is absolutely no foundation for that talk. There never has been——

Mr. Mayer: Your Honor recalls how in the alimony case, when Mrs. Harding wanted alimony, the old gentleman finally turned out some alleged real estate, and you remember the discussion during the hearing about the Statute of Illinois that he had the right to turn out real estate and there could be a sale of real estate and then a redemption, and there was fifteen months for the period of redemption. I think your Honor will recall there was some such statement made by me.

Mr. Ammen: Your Honor will further recollect that that was incident to his claim that she was to help him raise the money out of the real estate.

Mr. Mayer: If your Honor is correct in your Honor's ruling of October 25, then we are entitled to have our costs, and why not? That matter is disposed of and never can be heard again in this court—I mean the matter of our petition. I don't mean that the court can't reconsider or rehear it, but the order is final on that petition.

The Court: Yes.

Mr. Mayer: And costs follow, as a matter of course; and if your Honor will examine the authorities and Daniels' Chancery Practice, which I referred to in this 20th Federal, which was referred to in the 20th Federal and other cases that I have——

The Court: I will look at those.

Mr. Mayer —in a book which has perhaps come before your notice, I don't know whether it has or

not; it is rather a surprise to find such a book, entitled "Costs in Federal Courts." Has your Honor ever seen the book?

The Court: Yes.

Mr. Mayer: It is rather surprising to see how little questions questions are—on how little questions text books are written.

The Court: Is that in your office?

Mr. Mayer: Yes, that is in my office.

Mr. Ammen: What is the name of the author?

Mr. Mayer: Gunckel.

The Court: Well, leave them with me.

Mr. Mayer: Yes, I will leave them with your Honor.

Now, one suggestion more about the entry of this order. In the absence of Mr. Harding, which is not infrequent, that ought not to delay the spreading of record of the order which your Honor has entered. It follows your opinion and follows strictly the minutes of the order already of record in this cause.

The Court: I see no objection to putting in the words "in said answer" there. It is perfectly plain without that.

Mr. Mayer: I have no objection, your Honor; none whatever.

The Court: That is what it means anyway.

Mr. Mayer: I made the order—

The Court: The prayer and motion of the said George F. Harding?

Mr. Mayer: I would say "of said answer of said George F. Harding."

Mr. Ammen: What is that?

The Court: "Prayer and motion of said answer of," would not that fix it?

Mr. Ammen: Prayer and motion of said answer of—

The Court: "Answer of."

Mr. Mayer: "Of George F. Harding."

The Court: Yes; prayer and motion of said answer of George F. Harding. Put in the words "answer of" at the end of the line after the word "said"; wouldn't that fix it?

Mr. Ammen: "Prayer and motion of said answer"?

The Court: "Answer of."

Mr. Mayer: And just one further word. I will hand your Honor the 20th Federal that I borrowed from your library.

The Court: In here? Yes. All right.

Mr. Mayer: And I would, if possible, if not appearing too persistent, I would like to have this order entered today.

The Court: Yes; I think I can enter it this afternoon.

Mr. Mayer: I have handed your Honor the original.

Mr. Ammen: Now, I would like to have, if your Honor enters an order, I would like to have it—it is against our objections; that is, we object to the order—

The Court: Yes, I have it on the bottom here that you object to it.

Mr. Ammen: Yes, and perhaps, unless your Honor is going to be back before December, there ought to be an order entered continuing the—reserving the

right to settle the certificates of evidence as to these proceedings to the next term, which is the third Monday in December.

The Court: Oh, I will be back before that.

Mr. Ammen: You will be back before that?

The Court: Yes.

Mr. Mayer: We have no objection to that; but the objection and exception saves itself, your Honor, in chancery.

The Court: All right.

Mr. Mayer: I will leave with you the original order.

The Court: Yes; I will keep this order.

Mr. Mayer: The reason I suggested the entry of it today is on account of the matter tomorrow, your Honor.

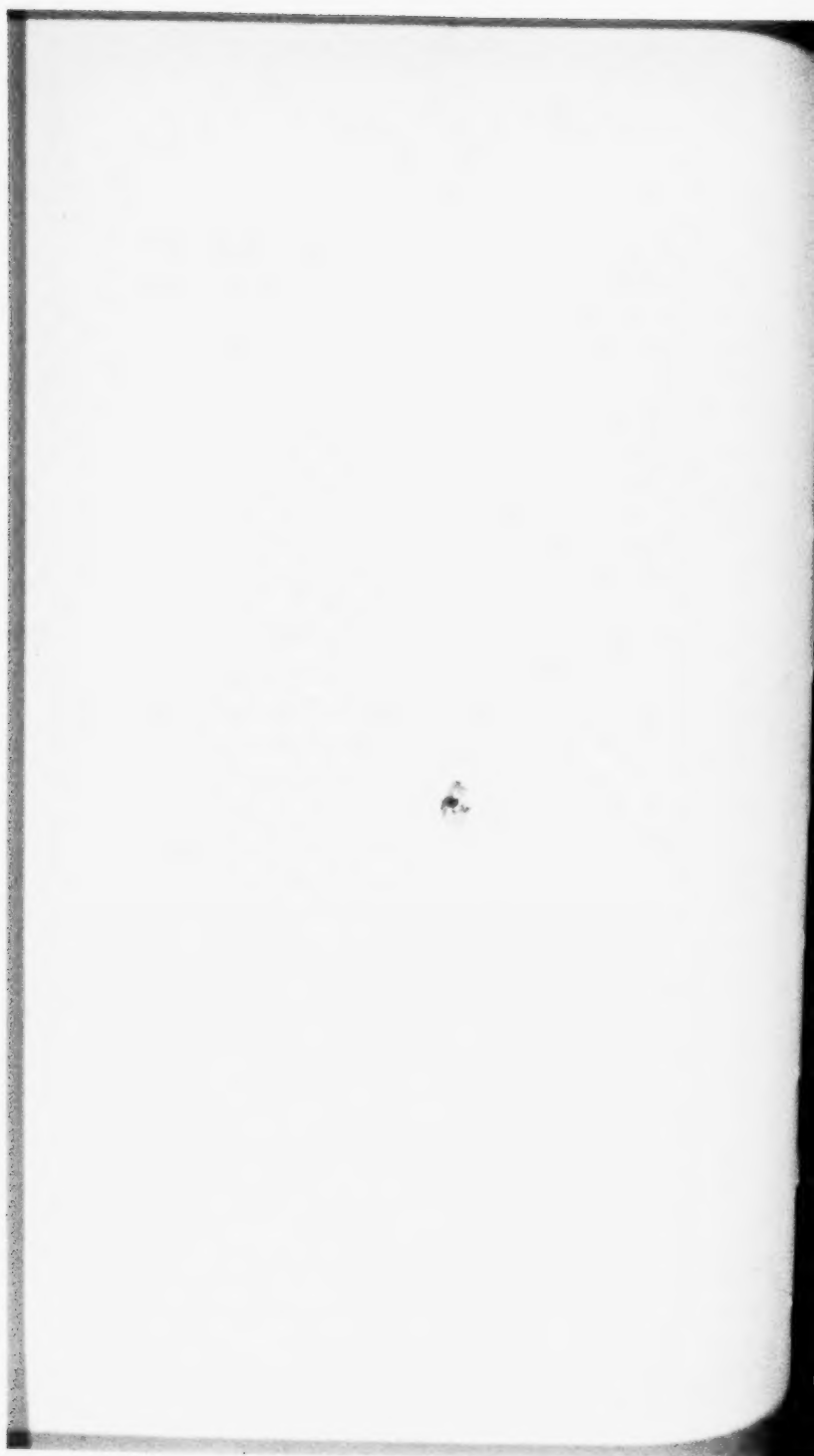
The Court: Yes; do you propose to dismiss if this is allowed?

Mr. Mayer: Yes, your Honor; and come back and ask for the set-off.

The Court: For the set-off?

Mr. Mayer: Yes.

Which was all the proceedings had in the above entitled matter on said date.



# Supreme Court of the United States

October Term, A. D. 1910.

IN THE MATTER OF THE APPLICATION

GEORGE F. HARRIS FOR A WRIT OF HABEAS CORPUS  
DIRECTED TO THE HONORABLE ATTORNEY GENERAL, DISTRICT  
ATTORNEY GENERAL OF THE DISTRICT OF COLUMBIA,  
HOLDING THE CIVIL SERVICE COMMISSION OFFICE IN AND  
FOR THE DISTRICT OF COLUMBIA, EASTERN  
DIVISION, THIRTEEN AND DISTRICT AND TO THE SAN  
CISCO COURT.

EXHIBIT A TO PETITION FOR MANDAMUS

Pages I and II.

WILLIAM J. AMMEN,

*Attorney for Petitioner.*

WILLIAM J. AMMEN & COMPANY, INC.



**EXHIBIT A.**

**Part I.**





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1909, transferred by said Hon. K. M. Landis, then holding said Circuit Court, to the undersigned, Arthur L. Sanborn, a Judge of said court.

Motion for leave  
to amend, sent  
by Judge Landis  
to Judge San-  
born.

The Court further certifies that thereafter on said April 23rd, 1909, at 2 P. M. in the afternoon of said date, the solicitors and counsel for said George F. Harding, complainant, and said Corn Products Manufacturing Company being present, and the court having entered upon the hearing of said motion, Mr. Levy Mayer, one of the counsel for said Corn Products Manufacturing Company read said motion and the consents thereto attached to amend said removal petition and referred to and read parts of the printed transcript of record filed in the Supreme Court of the United States, upon an application for a writ of *certiorari* to the United States Circuit Court of Appeals for the Seventh Circuit, in the case of George F. Harding, *et al.* v. The Corn Products Refining Company, *et al.*, A COPY OF WHICH PRINTED TRANSCRIPT OF RECORD IS AS FOLLOWS:

Printed record  
admitted in  
evidence.

NOTE: Said printed transcript of record thus inserted in said Certificate of Evidence, is reprinted as Part II of this "Exhibit A". Following the insertion thereof in the Certificate of Evidence, the same proceeds as follows:

It is further certified that the complainant insisted that the whole of said Transcript should be considered as being in evidence and the same was so considered by the Court.

And also read in support of said motion to amend said removal petition the affidavits of Levy Mayer and Harlen H. Parmenter, which are as follows:

United States of America,  
Northern District of Illinois,  
Eastern Division. } ss.

Affidavit of  
Levy Mayer.

IN THE UNITED STATES CIRCUIT COURT,  
In and for the Northern District of Illinois,  
Eastern Division Thereof.

George F. Harding,  
*Complainant,*  
*vs.*

Standard Oil Company of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, William C. Sherwood, W. H. Nichols, Edward T. Bedford, and E. P. Wemple,  
*Defendants.* } No. 28,865.

LEVY MAYER, being first duly sworn, upon oath deposes and says as follows:

1: I now am and on October 19, 1907, was, and for many years theretofore had been a member of the bar of this court, and of the United States Supreme Court. I was on October 19, 1907, and ever since have been and now am of counsel in the above entitled cause for said Corn Products Company, Corn Products Refining Company and Corn Products Manufacturing Company, three of the defendants to the bill of complaint herein. On November 4, 1907, and continuously since Mr. James M. Sheean, of the firm of Messrs. Calhoun, Lyford & Sheean, was and still is one of the solicitors for said three named defendants.

2. On November 4, 1907, I prepared and caused to be filed, as prepared by me, the petition for removal filed herein by said Corn Products Manufacturing Company; that said pe-

tition so on file is the same petition, in manner and form as it was prepared by me; that the following statement in said petition contained—

“That at the time of the commencement of this suit, the said complainant, George F. Harding, was and continuously since has been and now is a resident and citizen of the State of California, and a citizen of no other state or country,”

was inserted in said petition because and on account of the allegation contained in the bill filed herein on October 19, 1907, and in the amended bill filed herein on October 25, 1907, which statement is as follows:

“Your orator, George F. Harding, a resident and citizen of the State of California, humbly complaining, respectfully represents unto your Honors.”

3: The said statement above quoted from and so contained in said petition for removal as to the residence and citizenship of said George F. Harding was due entirely to the misinformation under which I then labored and which misinformation was derived by me from the said statement above quoted and so as aforesaid contained in said original and amended bills as to the residence and citizenship of said George F. Harding.

And further deponent saith not.

(Sgd) LEVY MAYER.

Subscribed and sworn to by said Levy Mayer, before me, a Notary Public, this 15th day of April, A. D. 1909.

KATHERYN McDONALD,  
Notary Public.

(Seal)

Complainant objected to the foregoing affidavit because made on information and belief.

United States of America,  
Northern District of Illinois, } ss.  
Eastern Division.

Affidavit of  
Parmenter

IN THE CIRCUIT COURT OF THE UNITED STATES,  
In and for the Northern District of Illinois,  
Eastern Division Thereof.

George F. Harding,  
vs. } No. 28,865.  
Standard Oil Company, et al.

HARLEN H. PARMENTER, being first duly sworn, upon oath deposes and says that he is of lawful age; that at the request made in March, 1909, by said Corn Products Manufacturing Company, he has since March 17, 1909, been making careful and exhaustive investigation for the purpose of determining the residence and citizenship of the above complainant, George F. Harding, on October 19, 1907, and before and continuously since said date up to the present time; that based upon said investigation deponent says that for a long time continuously prior to October 19, 1907, and on October 19, 1907, and continuously since up to and including the present time, said complainant, George F. Harding had been, was and is a citizen of the State of Illinois and a resident of the City of Chicago in said State of Illinois; that said George F. Harding was not on October 19, 1907, and at no time since has been and is not now a citizen of the State of California or a resident of said State:

And further deponent saith not.

(Signed) HARLEN H. PARMENTER.

State of Illinois, )  
County of Cook. } ss.

HARLEN H. PARMENTER, being first duly sworn, upon oath deposes and says that the above and foregoing affidavit, by him subscribed, is true to the best of his knowledge, information and belief.

(Sgd) HARLEN H. PARMENTER.

Subscribed and sworn to before me, a Notary Public, this 15th day of April, A. D. 1909.

(Seal) (Sgd) DAVID F. ROSENTHAL,  
Notary Public.

Hearing continued  
April 29 and 30,  
1909.

Thereupon said Levy Mayer then and there proceeded with his argument in support of said motion to amend said removal petition, and during the course of said argument contended that upon the application for leave to amend the removal petition there could be no controversy or issue of fact, and said:

"None (issue of fact) has been tendered here and none could be tendered on this application."

Thereupon he was interrupted by Mr. George F. Harding, who said:

"That is a great mistake. We are going to file our answer in a moment. You have offered your petition and we shall file our answer."

Mr. Mayer: It would be remarkable I say your Honor if we shall open our case on one state of the record, and then when I am through be met with another record. The practice your Honor is if they wish to take issue on the citizenship by plea in abatement, when there will be a trial before a jury, or by a master or before the court.

The Court: Or they may raise it on a motion to remand.

Mr. Mayer: Or motion to remand. But then that raises an issue of fact, which is heard—I do not know what your Honor's practice is,—which is heard in various ways. There is no certain practice. Some courts refer it to a jury, some courts refer it to a master, and some courts hear it in open court; but on the application to amend, the issue raised by motion to amend, no issue of fact can be made. If we are entitled to amend, then the petition will stand as though it had contained that allegation, your Honor, when it was filed. And they make a motion to remand, and can support it by an issue of fact, which your Honor will hear and determine."

The Court further certifies that nothing further was stated at this stage of the hearing by complainant, or on complainant's behalf, with reference to his filing or being desirous of filing, or presenting an answer to the motion to amend the removal petition, and no answer was at this time presented or filed by complainant.

Mr. Mayer then proceeded with his argument, but before the conclusion of the same the further hearing of said motion to amend said removal petition was continued until 10 A. M. April 29th, 1909, and at said hour on said date the further hearing of said motion was again continued to 3:30 P. M. April 30th, 1909.

The Court further certifies that at 3:30 P. M. April 30th, 1909, the hearing of said motion to amend said removal petition was resumed, counsel for said complainant and for said Corn Products Manufacturing Company being present. Immediately upon Mr. Mayer's resuming his argument on behalf of said motion, the following occurred:

George F. Harding and William J. Ammen, Solicitors for complainant presented and offered in evidence a printed pamphlet entitled:

"Statement of record, and proceedings, together with objections, and affidavits, and points and authorities, in opposition to defendant's petition to amend removal petition, submitted by counsel for the plaintiff under special appearance, for the purpose only of objecting to the said petition for leave to amend and while reserving to the plaintiff his objections to the jurisdiction of this court as stated in his motion filed December 23, 1907, to remand the cause to the state court."

Messrs. Mayer and Calhoun, solicitors for said Corn Products Manufacturing Company objected to said offer for the reasons advanced by them that the complainant is not entitled to file or offer said printed pamphlet or anything therein contained in evidence; that no issue of fact can be made upon the motion to amend said removal petition, and because no copy of said printed pamphlet, or anything therein contained, had been served on said Corn Products Manufacturing Company, or its solicitors, and because the admission of said printed pamphlet, or anything therein contained, in evidence would change the state of the record, as it was when the hearing of and the argument on said motion to amend said removal petition began on April 23rd, 1909.

Argument on the various matters ensued and the court took the same under advisement until 9:30 A. M. May 1st, 1909, at which hour and date the hearing of said motion was resumed, all counsel for said complainant and said Corn Products Manufacturing Company being present.

The Court ruled that he would not at this time consider any affidavits presented or offered by said complainant on the question of fact raised by the motion to amend said removal petition, but that he would permit said answer to the petition to be filed, because said answer "sets up the whole situation and circumstances and appeals to the discretion of the court," and the Court further ruled that in view of the fact that said answer had just been presented to the court during the course



Complainant's  
objections and  
answer filed  
May 1, 1909, to  
petition to  
amend removal  
petition.

of the argument of Mr. Mayer yesterday afternoon, and towards the close of his argument, that he would permit a reply to be filed on behalf of said Corn Products Manufacturing Company to said answer, said reply to be filed in the course of a few days, as soon as the same could be prepared by counsel for said Corn Products Manufacturing Company.

The Court further certifies that it was not until the first day of May, 1909, that a copy of the said pamphlet so offered by the solicitors for the complainant was served upon counsel for said Corn Products Manufacturing Company,—such copy being now and for the first time delivered to counsel for the Corn Products Manufacturing Company, by the solicitors for the complainant.

The Court further certifies that he examined said printed pamphlet and permitted to be offered in evidence that part entitled "Objections and answer to the petition or motion of the Corn Products Manufacturing Company, filed herein on April 16, 1909, for leave to amend the removal petition in said cause," and which part covers pages 88 to 108, both inclusive, of said printed pamphlet. Said pages are as follows:

United States of America,	} ss.
Northern District of Illinois,	
Eastern Division.	

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,  
Eastern Division Thereof.

George F. Harding,	} In Chancery.
<i>Complainant,</i>	
<i>vs.</i>	} No. 28,865.
Standard Oil Company of New Jersey, <i>et al.</i> ,	
<i>Defendants.</i>	

OBJECTIONS AND ANSWER TO THE PETITION OR MOTION OF THE CORN PRODUCTS MANUFACTURING COMPANY FILED HEREIN ON APRIL 16, 1909, FOR LEAVE TO AMEND THE REMOVAL PETITION IN SAID CAUSE.

Your complainant, George F. Harding, appearing herein specially and for the purpose only of objection to the jurisdiction of the Court in this cause as stated in his motion filed herein on December 23, 1907, to remand said cause,

and objecting and insisting that this Court has no jurisdiction of this cause, or over this complainant and has no power or authority or jurisdiction to allow or even entertain the said motion or petition for leave to amend, and without consenting to the removal of this cause to this Court, and still insisting upon his motion to remand the same, your complainant by way of further answer and objection to the said parties [petition] for leave to amend, shows unto your Honor the Honorable Kenesaw M. Landis, and represents as follows:

1. Your complainant objects to the hearing of the said petition for leave to amend, and to the granting of the same, and in support of these objections your complainant refers to the files and record in the case of the Chicago Real Estate Loan & Trust Company against the Corn Products Company, and others, being case No. 28695, in this Court, and also to the proceedings in the United States Circuit Court of Appeals, and for the Seventh Circuit, in said cause, including, particularly, the opinion and judgment of the said Court of Appeals on the appeal prosecuted by your complainant, and others, from the injunction order entered by this Court in said cause No. 28695 in December, 1907, on the motion or petition of Levy Mayer, as one of the solicitors for defendants in said cause, as appears from the records of this Court and of said Court of Appeals in said cause No. 28695, to which records reference is hereby made and the printed transcript thereof filed in the said Court of Appeals and now presented with this Answer, together with the additional printed copy of the Record and opinion of the said Court of Appeals on said appeal, all of which records are hereby made an exhibit to this answer, and the same are hereby referred to in support of the objections herein made.

2. Your complainant further objecting and answering says that said motion and petition for leave to amend are forbidden and enjoined by the said order of this Court entered in December, 1907, in said cause No. 28695, to which reference is hereby made as shown on pages 112-114 of said printed Transcript of Record, from which order said complainant quotes as follows, namely:

"Wherefore, the premises considered, it is hereby ordered, adjudged and decreed that said George F. Harding, George F. Harding, Jr., William J. Ammen, and A. B. Joyner, and each of them, and their and each of their agents, attorneys, solicitors and representatives be, and they hereby are, jointly and severally restrained and en-

joined until the further order of this Court, from further prosecuting or taking any steps or proceedings of any kind in said case of said George F. Harding *vs.* Standard Oil Company, of New Jersey, Corn Products Refining Company, *et al.*, which was instituted in the Superior Court of Cook County, Illinois, on October 19th, 1907, and was numbered therein, 263,565, and which case was subsequently docketed in and is now pending in this Court as case numbered 28865."

And no further order has been, or could be made or can now be made properly herein by this Court, because the said injunction order above quoted from has ever since remained and still is in full force and effect, and the appeal therefrom as shown in said printed transcript is still pending in the said Court of Appeals, and was so pending, when the said petition for leave to amend was presented to and filed in this Court, on April 16, 1909, at which time the hurried action of this court was wrongfully demanded by said petitioner, and its attorneys, and associate defendants, as shown by the stenographer's transcript of the proceedings of that date before Your Honor, which transcript is presented with this answer and made a part hereof as an exhibit thereto, and, upon this ground, and upon others above or hereinafter mentioned, your complainant respectfully insists and protests that this Court is without power or jurisdiction to allow or hear the said petition for leave to amend, and the same should therefore be stricken from the files, dismissed and not allowed by the Court; and your complainant further shows that this Court found and declared by the said order of December, 1907: "That the further prosecution of said suit of Harding against the Standard Oil Company should be enjoined. \* \* \* But said Harding by an appropriate proceeding, or petition, and upon a proper showing, may apply to this Court to intervene herein or become party hereto"; and by said appeal still pending as to the action open to the parties affected by said injunction order, all of the said parties, including your complainant, and said petitioner, and other parties to said cause, were and are left without power to further proceed in this cause, or otherwise proceed in the said litigations except to apply for leave to intervene as aforesaid, and the said injunction order still remains in full force awaiting the mandate of the said Court of Appeals in said cause, and this being the state of the case as established by said records, when said petition for leave to amend was filed herein, said petition should

be dismissed or stricken from the files and not allowed by the Court, and under the opinion and orders of the said Court of Appeals in said cause, to all of which reference is hereby made, no mandate having been yet issued by the said Court of Appeals, this Court is without power to act in the premises until the mandate of the said Court of Appeals be issued in said cause and presented to this Court.

3. Your complainant further shows that immediately on the delivery of said opinion, said Mayer, and his clients, the parties to this motion for amendment, filed in the said Court of Appeals a petition for a rehearing, a copy of which is made an exhibit to this answer, and prayed to be taken as a part thereof, and after said petition for rehearing had been made and the same was overruled, said Mayer applied for permission to file a second petition for rehearing therein, for special reasons, which was again denied, and disallowed by the Court of Appeals. That said Mayer then applied to the Court of Appeals and obtained an order to stay the mandate of the said Circuit Court of Appeals, and obtained a stay thereof until a writ of *certiorari* could be obtained from the Supreme Court of the United States or applied for the stay for application for such *certiorari* being limited to a period expiring March 29th, 1909, as shown by said additional printed copy of record; that said Mayer and clients on April 5, 1909, moved in the Supreme Court of United States for such *certiorari*, filing the petition for the same in said Supreme Court, on or about the 27th day of March, A. D. 1909, a copy of which petition for *certiorari* is made an exhibit to this answer; that your complainant having leave under the rules to reply to said petition for *certiorari* by stipulation shortened the time and filed a reply, a copy of which reply is made a part of this answer as an exhibit; and your complainant further shows that on April 12, 1909, the Supreme Court of United States denied the said application of said Mayer and associates then prosecuted in the name of the Corn Products Refining Company, one of the defendants, and the said petition for *certiorari* was denied by the Supreme Court on said date, April 12, 1909.

Your complainant then moved in the said Court of Appeals for a mandate to issue to this court from said Circuit Court of Appeals to enforce the orders directed by said opinion, to-wit: to reverse the said order of injunction and to dismiss the said cause of the Real Estate Company upon the motions made, or some of them, before your Honor on or before December 26, 1907, as more fully shown by said records.

5. Your complainant says that said motion for mandate was resisted by said Mayer and associates under color of an application for a modification of the opinion or order of said Court of Appeals, and a printed brief was presented to said Court of Appeals for such modification a copy of which is made an exhibit to this answer, and said motion for mandate which had been submitted to the Court of Appeals, followed by said motion for a modification of the opinion or order had not been determined, though taken under advisement by the Circuit Court of Appeals when this petition for amendment was so hurriedly filed in this Court, being then still under advisement, and said mandate being stayed for the hearing and decision of said motion for modification of said opinion or order; but, although the Court of Appeals overruled said motion for a modification of the opinion or order of that Court upon yesterday, as then announced by said Court of Appeals, no decision or order of record has yet been rendered or order entered by or in that Court, within the knowledge or information of your complainant for the issue of said mandate to this Court, although all grounds of objection possible to the issue thereof have been urged by the said Mayer and decided by the said Court against him and his associates.

6. Your complainant further shows that it was thus, while all action was stopped in the Circuit Court and in the said Court of Appeals by the said Mayer and his associates, and the issue of the said mandate thus delayed, it was in this situation that counsel for your complainant was required on April 16, 1909, by order of this Court, to stipulate of record herein not to take any step in this Court *or elsewhere*, in this case, or in said case No. 28695, *until the hearing and decision of this said petition for leave to amend*, notwithstanding the pendency of the said appeal, *with said injunction of December, 1907, still in full force and effect against your complainant*; and your complainant insists that this attempt to amend, made in this position, and leave now asked to make such amendment, notwithstanding the fact that no mandate has yet been issued, or ordered by the said Court of Appeals, and while your complainant was and still is enjoined from any proceedings in either of the said suits except applying to intervene, as aforesaid, and becoming a party to the said dead case of the said Real Estate Company, is improper and grossly unfair and should be prevented and denied by the Court.

7. *It was while this state of the case continued that this petition for leave to amend was presented herein, and in the*

absence of your complainant, a citizen and resident of the State of California, and while he was absent from the State of Illinois, and without counsel of record in this cause other than himself, and your complainant having never appeared in the case except by his motion to remand, and only appeared in the State Court by the filing of his bill herein, and the issue of process for service upon the defendants, and the issue of subpoenas to compel the defendants themselves to testify as to the matters and charges in this bill; and it was while your complainant was actually before the notary public, awaiting the attendance of the defendants, and especially those of them who had been subpoenaed as witnesses by your complainant, it was at that very time that said petition of November 4, 1907, was presented in this Court, secretly and without notice, and your complainant was then restrained, without notice, *and has ever since been restrained*, from further proceedings in this cause, as shown by the said order of November 4, 1907, *and the said injunction order of December, 1907*, to all of which reference is hereby made.

8. Your complainant further shows that while this was the state of the case in this Court, and in said Court of Appeals, and while no action could or should have been had, as above set forth, this attempt to amend the said removal petition has been made in the absence of your complainant, and your complainant charges that such attempt was and is a deliberate and wilful and fraudulent attempt to obtain an undue advantage by the entry of the order prayed for in the said petition for leave to amend.

9. Your complainant further shows that the removal of this cause from the State Court was secretly obtained, in defiance and contempt of the law, and of the State Court, and without right; and your complainant did not even learn of such removal to this Court until long afterwards, namely, after November 12, 1907, or on that date, upon the hearing pursuant to which the said order of December, 1907, was entered by this Court; and when your complainant first learned of said removal he had already been enjoined and restrained from taking any action in this case by said order of November 4, 1907, obtained secretly and without notice, as above set forth; and promptly after learning of said removal, your complainant applied to Your Honor, and repeatedly so applied, to hear your complainant's motion to remand this cause to the State Court, as shown by said printed transcript of record, to which reference is hereby made, and your complainant



other orders in the second case on motions to remand or any motions in the second case."

Mr. Harding: "We want an order overruling it. We have filed the motion. We cannot take anything up. The cases are independent upon this record except in the opinion of your Honor. We moved to remand long before the entry of this order" (of December 13-26th) "and now we only want an order upon that motion" (to remand), "if you say it is too late or whatever you are pleased to say."

The Court: "Did you ask me to remand before this court came—"

Mr. Harding: "During the hearing" (November 13th).

The Court: "While this matter was being heard—this motion in the first case being heard?"

Mr. Ammen: "Yes, in this respect, I remember this one thing that occurred. We asked your Honor if we could give notice—"

The Court: "Afterwards."

Mr. Ammen: "That was pending this hearing."

The Court: "Now, you came here after the matter had been submitted to the Court on this application."

Mr. Ammen: "Yes, before the decision."

The Court: "Yes, now, the view of the Court in this matter is this, as I have indicated four or five times. The view of the Court is that this order restraining the parties from going on with the first case applies to the parties here and in the State Court and anywhere, *going on in the second case*."

Mr. Ammen: "In our draft of the order" (December 13-26) we asked that this be without prejudice to the motion to remand."

The Court: "I won't enter that order."

Mr. Ammen: "I merely want to call the Court's attention (Nov. 4) to that. After they got this injunction from Judge Kohlsaas and ruled us to show cause why this second suit should not be restrained, they removed the second case to this court. Now, the view of your Honor is that although they took that step after they got that restraining order, we must leave it there. Are we not liable to be thus prejudiced in that suit?"

The Court: "Not if you read the order of injunction. The motion to take up these other matters may come along when this motion, when this order which the Court has entered has been modified under an order of a Court authorized to give instructions to this Court."

Mr. Harding: "It will show our several motions to dismiss."

The Court: "You have made several motions. Said several motions to dismiss filed herein are hereby referred to and made a part of this certificate of evidence."

Mr. Harding: "And the motion to remand?"

The Court: "I have said at least a half dozen times that that motion to remand I would not hear. This order enjoining the parties in the first suit from prosecuting the second suit or going on with the second suit covers a motion to remand as plainly as it covers any other sort of a motion in the second case. Do you understand that proposition?"

Mr. Harding: "But who understands that in that record? If we take up the second case, the motion to remand is found there. There is no order made upon it and no order made in that case at all. Isn't it a very easy thing for your Honor to say that you have already overruled it, if—"

The Court: "My view of this situation is such that I don't think you have a right to be going on with these two suits at once, in the Federal Court and State Court, or anywhere else."

Mr. Ammen: "In order to prevent our being prejudiced ought not your Honor in this present order specifically to state, so that there can be no controversy, that it does enjoin our proceeding with the motion to remand?"

The Court: "If you desire it to specifically state that."

Mr. Ammen: "We think that in order to protect us fully from our neglect or failure to push that motion—"

Mr. Ammen [Mayer]: "It is in the second suit. \* \* \* The motion to remand in the second suit is here on file. You are not disposing of that motion, you are entering no order in the second suit."

The Court: "I am entering an order in the first suit, that there shall not be even a motion to take up the motion to remand."

Mr. Harding: "That is all right. I only want your Honor to say so, otherwise Mr. Mayer will say there was no order."

Mr. Ammen: "All we want is to make sure that your Honor states in the record specifically what you hold."

The Court: "I will do whatever Judge before whom it comes up the justice to assume that he will understand" (Record, p. 332).

11. Your complainant further respectfully shows unto your Honor that the said injunctive order of December, 1907,



was meant by your Honor to have the force and effect stated by your Honor, in the extracts just given from the record, where we quote from the certificate of evidence, and it must import verity as agreed to between all parties, and has the signature of the Court itself; and your complainant submits that this motion to remand has therefore been pressed upon your Honor ever since the removal of the case from the State Court was known to your complainant, and was urged up to the very latest hour, and your Honor has seen fit to hold that a remand of this case should not be allowed in entering the said order of injunction, according to your Honor's interpretation of that order, and your Honor's action, and there can be no doubt about this by the record itself. Your Honor's attention is called therefore to the fact that the said petition for removal, of November 6th, 1907, was based upon the fact stated in said petition, in which are not contained the matters referred to and now sought to be placed in such haste in said petition a year and a half afterwards; and after this struggle for a year and a half over the rightfulness of said removal upon said petition, and that it was never suggested in the whole course of the case until after the Court of Appeals had put an end, with the assistance of the Supreme Court of the United States, to the pretence that this removal ought to have been obtained, in view of *ex parte Wisner* aforesaid, and the act of Congress prohibiting said removal; and it is the latest desperate effort of the defendants herein to wrongfully maintain this dead case in this court, or to defeat and delay justice so long delayed.

12. Your complainant further shows unto your Honor that this petition for leave to amend alleges falsely that George F. Harding is not a resident or citizen of California, and is a resident and citizen of the State of Illinois, and was such a resident and citizen on October 19th, 1907, when this bill was filed, and this present petition for leave to amend purports to be filed by the Corn Products Manufacturing Company, and is not sworn to except by one Frederick E. Fisher, as president, and he merely states what he does upon information and belief, without a pretence of knowledge; the language of said Fisher being that said petition is true to the best of his knowledge, information and belief; and that he makes this affidavit on behalf of the said company. The said Levy Mayer appends a statement that he prepared the petition for removal, which alleges, and is sworn to or joined in, by all the parties as true, in which it is declared by the 19 de-

defendants, that said Harding was a resident and citizen of the State of California and a citizen of no other state at the time of filing this bill; and said Mayer states that he was an attorney for said Corn Products Refining Company, and said Corn Products Manufacturing Company and Corn Products Company, three of the defendants, and prepared and caused to be filed the petition for removal; but, he does not pretend that he was attorney for any other of the 17 co-defendants, nor upon what ground, or for what reason the other co-defendants joined him and in the case of the Standard Oil Company, it "consented" to said petition for removal, and all alleged the truth of said petition and the residence of said Harding to be in California; and said Mayer only says it was due to the misinformation under which he then labored, derived from the very statements in the original and amended bills as to the residence of said Harding, but does not pretend that he has any knowledge of the subject nor that the other parties were induced by any misinformation to make their affidavits or join in said removal petition. The affidavit of Harlen H. Parmenter, an unknown man, who makes an affidavit of the conclusions which he reached upon investigation as to the residence of said Harding, but he swears only that the affidavit by him subscribed "is true to the best of his knowledge, information and belief"; so that there is nothing in the statements of said petition, nor of the affidavits appended to said petitions, which explains or controverts the facts alleged as to all the parties, and that only upon information and belief. And there is nothing to show but they believed them to the extent, as they had, during the whole progress of the case for a year and a half, that the complainant was and is a citizen and resident of the State of Illinois; and nothing to show that any of the other parties have any knowledge of even the limited number of facts set forth in the petition, every one of which would be susceptible of statement directly by some one who knows the facts or to be shown by statements directly and could then be weighed when so stated by a Court as ground for action.

13. Your complainant further alleges that the truth is as stated in said bill as to the residence of said complainant, and it was untrue that he was, as alleged in said petition, and affidavit, namely: that he was not a citizen or resident of the State of Illinois on October 19, 1907, when this bill was filed in this cause; but the contrary is shown by the affidavits of Colonel Joseph H. Strong, and Doctor DeVeney, and others, all old neighbors and associates of your complainant when

your complainant resided in Illinois and men of the highest character, and most fully informed in relation to the matters mentioned in said affidavits, and also by the affidavits of A. C. Snyder, Addie C. Harding, Anna M. Burson, Frieda Hartman, Ellen Harding, E. Sanders, John L. Zweck, Abner C. Harding, George F. Harding, Jr., Charles B. McCoy, Gregory T. Van-Meter, Albert B. Joyner, Ada E. White, and William J. Ammen, all of which affidavits are presented with this Answer and objections, and made a part hereof, and exhibits thereto in support hereof.

14. Your complainant further states that for a period of more than ten years just prior to the filing of this Bill of Complaint by him in this cause he was not a citizen or resident of the State of Illinois; that he gave up his former residence and citizenship in Illinois more than ten years before this Bill of Complaint was filed, and then became, and has ever since remained and still is a citizen and resident of the State of California, and was a citizen and resident of the State of California on October 19, 1907, when he filed this bill in this cause; that during the ten years last past he has been in the State of Illinois only occasionally, and for brief periods only, and then only when his presence in Illinois was required by necessity, or for a visit with his friends, or relatives, and at long intervals, and your complainant has never at any time since he became a citizen and resident of the State of California, as above stated, made or considered a return to the State of Illinois with any intention or purpose of again becoming a citizen or resident thereof, but has always intended and still intends to maintain and preserve his said residence and citizenship in the State of California; and during the period of more than ten years last past whenever in making deeds, or other instruments of writing, or in registering at hotels, as he has had occasion to do for perhaps a thousand times during said period, he has always stated in such instruments and upon such hotel registers his residence as San Diego, in the State of California, and the facts as to the residence and citizenship of your complainant are more fully stated in the said affidavit of your complainant, entitled in this cause presented with this Answer and objections, and made an exhibit thereto and a part thereof.

15. Your complainant further states that for some years past the condition of his health has been such that he has been under the constant care of physicians in sanitariums and health-resorts abroad and within that period of his life was

twice given up by said physicians, and by such illness he was required to remain for some years in Europe under the care and direction of said physician, and did not return from abroad until in or about July, 1907, and your complainant then spent some months in Chicago, Illinois, preparing this bill of complaint, and preparing to prosecute and maintain the same, which was required in order to rescue the property of himself, and his fellow stockholders in the Corn Products Company, from the malefactors made defendants thereto.

16. Your complainant further shows that this petition to amend said removal petition is merely a fraudulent attempt on the part of the defendants to this bill to prevent proof of the facts set forth in the bill showing that they have seized in defiance of law and of right some \$20,000,000 of property, and they are asked by the bill to permit proof to be made in support of such charges, and in the effort to make such proof by the testimony of the defendants themselves your complainant was actually engaged on November 4, 1907, at the very hour when the first attempt was made by the defendants by said petition of November 4, 1907, *ex parte* and without notice as above set forth, to defeat and delay justice and compel this case to be transferred to this Court and appended to the said dead case in the Federal Court.

17. Your complainant further states and shows unto Your Honor that he denies the right or power of the Court to make the order of amendment for which the petition asks, or grant such leave to amend; and your complainant shows that it would be a great injustice and entirely without precedent to permit the progress of this case to be stopped and stayed by an investigation of the residence and citizenship of this complainant, so long undisputed, upon no other basis than the information and belief of the unknown Parmenter whose conclusions and opinions stated in his affidavit are of the most general description, and false and absurd, and should be disregarded, and the same are entirely untrue as alleged by your complainant, and by a host of witnesses, some of which, nearly twenty in number, know the facts; not one of which facts are stated as known to be true to the knowledge of any party mentioned in the petition for the amendment or in any affidavit attached thereto; and upon such slender foundation the progress of any case may at any time be stopped to the great prejudice and injury of suitors; and it is important for this Court to know that in the presence of this Court the solicitor and attorney, said Mayer, who has had the conduct of all this

litigation, as he claims, for a part of the clients, has stated his determination, and inobedience to the request of his clients, to litigate every question connected with the litigation, and who has as the said records show, made the most desperate attempts, at every point, in the case, and in said case No. 28695, to delay and defeat justice, and on grounds which, when investigated, are found to be without any foundation and without the slightest merit.

18. Your complainant further shows unto Your Honor that the Corn Products Manufacturing Company is a criminal corporation under the laws and judgment of the Courts of this State and especially of the Supreme Court as shown in the case of George F. Harding, and the Chicago Real Estate Loan & Trust Company against the American Glucose Company, and others, 182 Ill., 531, including the Glucose Sugar Refining Company, the name of which corporation is alleged to have been afterwards changed, and it is now known by the name of the said defendant, and it now is the petitioner to this Court for this very amendment, to-wit, the Corn Products Manufacturing Co.; and this extraordinary proceeding is conducted by the said Levy Mayer, who was condemned in the said case and by said Supreme Court of Illinois, being the promoter and manager of the great crime against our laws therein attempted, as the reported case will more fully show; and these parties are the very last persons who are entitled to the indulgence of the Court.

Wherefore, and for other reasons, your complainant prays that the said petition for leave to amend said removal petition may be stricken from the files by order of this Court, or dismissed, and wholly disallowed and denied, and your complainant will ever pray, etc.

(Sgd.) GEORGE F. HARDING,  
Complainant.

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

George F. Harding, being first duly sworn, states on his oath that he is the person whose name is subscribed to the foregoing Answer and Objections, that he has read the same and knows the contents thereof; that the same and the matters and things therein stated are true of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes them to be true. Further affiant saith not.

Dated this 22nd day of April, A. D. 1909.

(Sgd.) GEORGE F. HARDING.

Subscribed and sworn to before me this 22nd day of April, A. D. 1909.

(Sgd.) ALICE WILLNER,  
(SEAL) *Notary Public in and for Cook County, Ill.*

The Court further certifies that what are entitled "Affidavits" and which are contained on pages 109 to 146, both inclusive, of said printed pamphlet he refused to receive in evidence. Said affidavits are as follows:

Affidavits in support of "Objections and Answer," not admitted.

United States of America,  
Northern District of Illinois,  
Eastern Division. } ss.

IN THE UNITED STATES CIRCUIT COURT,  
In and for the Northern District of Illinois,  
Eastern Division Thereof.

George F. Harding,  
Complainant,  
vs.  
Standard Oil Company of New Jer-  
sey, et al., Defendants.

In Chancery.  
No. 28,865.

George F. Harding, the complainant in this cause, being first duly sworn (in reply to the petition or motion of the Corn Products Manufacturing Company presented with affidavits, etc., by Levy Mayer for leave to amend the removal petition in said cause) deposes and says:

That this affiant was not a citizen or resident of the State of Illinois on Oct. 19th, 1907, when his bill herein was filed, in the Superior Court of Cook County, Illinois, and for more than ten years just before said bill was filed affiant had not been a citizen or resident of the State of Illinois; that affiant gave up his former residence and citizenship in the State of Illinois more than ten years before said bill was filed, and then became and ever since has been and now is a citizen and resident of the State of California, and was a citizen and resident of California on October 19, 1907, when he as complainant filed the said bill in this cause; that affiant has been in the State of Illinois, occasionally, only, and for brief periods, within such ten years last past, and always during said period his presence in Illinois has been due to necessity, or a wish to visit his friends, and at rare intervals; and affiant has never at any time since the year 1895 made or considered a return to Illinois to become a citizen or resident thereof, but has always since the year 1895 intended and still intends to retain and preserve his residence and citizenship in the State of California.



Affiant further states that affiant went to and selected San Diego, California, as his place of citizenship and residence, more than ten years ago, chiefly because his only sister had resided in said city of San Diego for many years prior thereto, she having urged him to come there at what then seemed to be, apparently, about the close of their mutual lives, both then being near the age of seventy years, and suffering from the infirmities of age. And affiant lived with his said sister and family there, in a house in San Diego, in said State of California, in 1895, 1896 and 1897, leased to him on his arrival there, in 1895, and, later, bought by this affiant; and it was nearly three years thereafter when this affiant brought the suit so fully set forth in said petition, etc., for divorce, against his wife for her desertion of ten years before; said suit for divorce by him was begun in California immediately after the decree of the Circuit Court of Cook County, Illinois, for alimony in her suit which had been begun by her in February, 1890, for divorce, and, finally, changed, of record, for separate maintenance, and affiant at once, namely, in the fall of 1897, caused her to be served with summons in his said suit for divorce and she at once appeared therein and has defended said case ever since 1897, and said case is still pending and undetermined in the State of California, and one of the defenses made by her, and unsuccessfully made, in that suit was that this affiant was not a resident of California before and at the time of the filing of said bill for divorce and upon this issue, among others, said cause was heard and decided in favor of this affiant by a chancellor of great prominence and ability after a full hearing and a trial of nearly a month, she putting in the testimony of over thirty witnesses, through and under the care and management of the ablest and most prominent attorneys of California and many of said witnesses on both sides were personally called, upon this very issue of non-residence which was determined in favor of affiant on the merits by said Chancellor in said cause and upon her appeal to the Supreme Court of California in that cause from said findings and decree of said Chancellor, the several issues including that of nonresidence were fully urged, and again determined by said Supreme Court in favor of this affiant and said decree of the Chancellor was affirmed in said cause by said Supreme Court, as shown by the report of that case in the Supreme Court of California—*Harding vs. Harding*, 140 Cal., 690; and as shown in and by that opinion there was a careful and full affirmance of said Chancellor's decree and his



determination of the questions on all of said issues; and in that case the Supreme Court of California held that the intention of the party as to his residence was the material question, citing, among other cases, 124 Cal., 688, and (in the United States Supreme Court) *Chicago Railway Company v. Ohle*, 117 U. S., 123, and in the Supreme Court of the United States in said case of *Harding v. Harding* (198 U. S., 331), where it obtained jurisdiction upon the claim only that full faith and credit had not been given to the said Illinois decree, and decided nothing but that question of law, viz.: whether said Illinois decree was entered by consent and was therefore not final; and the Supreme Court of California in the same case, 148 Cal., 398, where the case was sent by direction of said United States Supreme Court for "proceedings not inconsistent with this opinion," determined that said complainant therein could show any facts in reply to "those alleged in the answer in support of the estoppel or anything which legally avoids the estoppel." Hence, this affiant says that in that case the findings of the Chancellor upon the merits, and upon this very issue of residence, still stand and the only question remaining there is that of estoppel by the Illinois decree, and the question of affiant's residence in California remains as already determined in the complainant's favor in that case, as above set forth.

Affiant further states that for some years last past the condition of affiant's health has been such that affiant has been under the care of physicians, in sanitariums and health resorts abroad, and thus prevented from enjoying the beautiful climate of his said residence in California, under the advice of his physicians; and, on his returning from Europe to America in 1907, this affiant found it necessary to prepare this bill, and prosecute and maintain the same in order to rescue the property of himself and his fellow stockholders of the Corn Products Company from the malefactors made defendants herein; and their efforts to defeat and delay justice will appear and is partly shown by the record of the case of the Chicago Real Estate Loan & Trust Company *vs.* the Corn Products Manufacturing Company, and others, in this Court, and in the Court of Appeals, and that record this affiant desires to be made part of this affidavit for greater clearness and certainty.

Affiant further states that said Levy Mayer procured the restraining order of November 4 and afterwards the injunction order of December 13-26, against the affiant and others

upon sundry deductions made by him to the court on the hearing of November 12 and 13, 1907. Said Mayer then addressed this court as the attorney and agent of all the defendants in both cases, and especially of said petitioner by making this motion, viz.:

"Mr. Mayer: No. Don't seek by interrupting, if you please. You will see, your Honor, that George F. Harding the complainant in this second suit, was the president of the Chicago Real Estate Loan and Trust Company, and owned and controlled it, and today owns and controls it, but that his son is named as the president, George F. Harding, Jr., and that made the change in the personnel of the corporation, and when, a few years ago, Harding, Senior, got into litigation with his wife, he changed his residence to California" (Rec., p. 175).

"Mr. Mayer: George F. Harding brought some four appeals to the Appellate and Supreme Courts. In all these cases, the counsel who appear for him here appeared for him there, and all of a sudden Harding, who was born in Illinois, some seventy years ago, changed his residence to California and became a citizen of the Golden State, and he was not a citizen of Illinois, and therefore he filed a bill there for divorce against his wife, who had pending here her separate maintenance proceedings, and he secured his divorce against his 70-year-old wife on the ground of alleged desertion" (Rec., p. 176).

Mr. Mayer: "In 1893 or 1894 the State Court referred the case to a Master, and the litigation went through the Appellate Court twice or three times and to the Supreme Court twice. In 1894 he was President of the Real Estate Company and in 1893 *this stipulation was filed by him*. In 1896 a decree of alimony was rendered.

"*Thereupon he moved to California, and there filed a bill for divorce*. Now the next thing was the attempt of the wife to get her alimony. I think there were three appeals to the Appellate Court and two to the Supreme Court after this first litigation. Then he moved to California and there sued his wife for divorce on the ground of desertion. The California Court gave him a decree, and it was taken to the United States Supreme Court and reversed on the ground that the California Court had violated the Constitution of the United States. That is the exact language of the Supreme Court:

"'This being the case it follows that the Supreme Court of California in affirming the judgment of divorce failed to give

to the decree of the Illinois Court the due faith and credit to which it was entitled, and thereby violated the Constitution of the United States.' " (Rec., p. 210.)

Affiant further states that said Mayer, on November 4, 1907, over his own signature, as an attorney and under the oath of his clerk and alleged agent of the Corn Products Refining Company made the following declaration, to which said Bangs attached his affidavit, viz.:

"That said George F. Harding was, as your petitioner is informed and believes, born in the State of Illinois, and that he is now over 70 years of age, and that he has continuously, during his life, been a resident and citizen thereof, until he moved to California, wherein he instituted proceedings for a divorce against his wife, and which proceedings are the same proceedings referred to in *Harding v. Harding*, 198 U. S., 317" (Rec., pp. 74-5).

STATE OF ILLINOIS, )  
COUNTY OF COOK. )ss.

Hal C. Bangs, being first duly sworn, upon oath deposes and says that he is the agent in this behalf of said Corn Products Refining Company; that he is familiar with said litigation and has made careful, exhaustive and diligent search into the facts and circumstances detailed in the above and foregoing motion; that all the facts therein stated, except the facts therein alleged upon information and belief, are true, and as to the facts therein alleged to be upon information and belief, he believes the same to be true.

HAL C. BANGS.

Subscribed and sworn to before me, a Notary Public, this 4th day of November, A. D. 1907.

FRANCIS E. MATHEWS,  
Notary Public.

(Rec., p. 76).

That these deductions of Mayer and his clerk make incredible this present petition to amend the petition for removal, and they contradict the said petition for amendment and the affidavits of the Corn Products Manufacturing Company, and especially the affidavit of Levy Mayer, and render the affidavit of said Parmenter a ridiculous falsehood, unworthy of consideration and beneath notice.

Affiant further states, viz.: That he was admitted as a citizen of California to practice law as an attorney in said state after a hearing and motion in Supreme Court in San Francisco, in 1901 or 1902, and a formal license and certificate were issued to him to that effect at the time; that it was, in effect, the decision and declaration by the Supreme Court of California of his citizenship in said state, upon which finding said admission to the bar was based and allowed, under the statute of said state.

Affiant further states that the statements in the said petition for leave to amend, and in the affidavits therewith filed by Levy Mayer, and others, herein, in conflict with this affidavit are all untrue; and, on their face, said affidavits, as to all material matters are made upon information and belief, only; and relate to the investigations of a person named *Parmenter whom this affiant has been unable to find*, and which judged by his false and absurd conclusions and opinions stated in his affidavit should be disregarded, and the same are untrue.

Further affiant saith not.

Dated this April 22nd, A. D. 1909.

(Sgd.) GEORGE F. HARDING.

Subscribed and sworn to before me on this 22nd day of April, A. D. 1909.

(Sgd.) ALICE WILLNER,  
Notary Public in and for Cook County, Ill.

SEAL)

United States of America,  
Northern District of Illinois, } ss.  
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,  
In and for the Northern District of Illinois,  
Eastern Division Thereof.

George F. Harding,  
Complainant, }  
vs.  
Standard Oil Company of New Jer- }  
sey, et al., Defendants.

George F. Harding, Jr., being first duly sworn, deposes and says that he is a son of George F. Harding, complainant in the above entitled cause; that affiant was born in Chicago, Illinois, August 16, 1868, and has, at all times since, resided in said City; that in or about the year 1895 said complainant ceased to be a resident, or citizen of the State of Illinois, and then became a resident of the City of San Diego, California, and a citizen of said State of California, and shortly thereafter purchased a residence in said City of San Diego and that at all times since 1895, said George F. Harding has claimed to be a resident of said City of San Diego, and a citizen of said State of California; that in or about 1899, said George F. Harding, by reason of his then being a nonresident of the State of Illinois, as aforesaid, ceased to be a member of the Chicago Literary Club, Washington Park Club, Calumet Club, and other clubs of said City of Chicago, of which said Clubs said George F. Harding had theretofore been a member.

That prior to the time of his becoming a resident of said City of San Diego, and a citizen of said State of California, as aforesaid, said George F. Harding was always active in politics and voted at primaries and elections held in said City of Chicago, but that since the year 1895 said George F. Harding has not voted at any election, or primary held in said City of Chicago, or in said State of Illinois, and for many years last past the name of said George F. Harding has not appeared in any City Directory, of said City of Chicago, as a resident thereof.

That affiant has at various times since said George F. Harding became a resident of said City of San Diego, as aforesaid, prepared and has caused to be prepared many affidavits, deeds, and other instruments to be executed and which were actually executed by said George F. Harding and the residence of said George F. Harding when mentioned therein was invariably stated to be San Diego, California; that it is and has been a matter of common knowledge among the friends, relatives and acquaintances of said George F. Harding that he, said George F. Harding, is and has been continuously for many years last past a resident of said City of San Diego, and a citizen of said State of California.

That during ten years last past said George F. Harding has been in said City of Chicago, or in the State of Illinois very seldom for short periods for the purpose of visiting friends and relatives and then only or when his presence was required by litigation, or business, wherein said George F. Harding was interested as attorney, or as a party in interest, and when in said State of Illinois has visited at the residence of affiant in Chicago, or stopped at some hotel or club of said City, and has not at any time during said period had or maintained a residence in said City of Chicago, or in said State of Illinois.

That during said period affiant has received many letters and communications from and addressed many letters and communications to said George F. Harding when he, said George F. Harding, was at his said residence in said City of San Diego, and that during said period when affiant did not know the address of said George F. Harding he, affiant, addressed letters and communications to said George F. Harding at said City of San Diego and the same were forwarded from there to said George F. Harding and during said time affiant shipped or caused to be shipped to said George F. Harding at said City of San Diego, personal property belonging to said George F. Harding.

That about four or five years ago said George F. Harding, then being very ill, visited Europe upon the advice of his doctors for the purpose of benefiting his health; that while in Paris he underwent a severe operation and was confined to his bed for many months thereafter as a result thereof, and did not recover sufficiently to be able to return to America for a period of more than two years thereafter.

Affiant further states that said George F. Harding was not on the 19th day of October, 1907, and had not been for many years last prior thereto, and has not since said date been a

citizen or resident of the State of Illinois but in or about the year 1895 said George F. Harding became and has ever since remained and still is a resident of the City of San Diego, and a citizen of said State of California.

Further affiant saith not.

(Sgd.) GEORGE F. HARDING, JR.

Subscribed and sworn to before me a Notary Public, by said George F. Harding, Jr., this 20th day of April, A. D. 1909.

(Sgd.) I. EMELIA JERUSALIMSKY,  
Notary Public.

(SEAL)

UNITED STATES OF AMERICA,  
NORTHERN DISTRICT OF ILLINOIS, } ss.  
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,  
Eastern Division Thereof.

George F. Harding,  
Complainant, }  
vs. }  
Standard Oil Company of New Jer-  
sey, et al., Defendants.

Abner C. Harding, a resident of Chicago, Illinois, of lawful age, son of George F. Harding, Complainant in this case, first being duly sworn, says he knows of his own knowledge that George F. Harding, complainant in this case, ceased to be a resident or citizen of the State of Illinois about twelve years ago, at which time he took up his residence in San Diego, California, with his only sister, my aunt, and has never re-acquired any residence or citizenship in Illinois.

Affiant has drawn and joined in numerous deeds and mortgages and instruments during this period and said George F. Harding has always described his residence as being in San Diego.

Letters and communications addressed to him at various times when in San Diego, California, were received by him and acknowledged.

George F. Harding's appearance and sojourn in Illinois for



the last ten years has been almost wholly controlled and confined to short stays here occasioned by the necessities of litigations requiring his presence as counsel or necessary witness.

When his presence was not immediately required he remained elsewhere very much controlled by his physician's advice.

Up to the time of the preparation of this bill begun in August, 1907, and finished on October 19th, 1907, he had been abroad about three years, during which time his life had been despaired of and his return to health doubted by all.

(Sgd.) ABNER C. HARDING.

Subscribed and sworn to, before me, a Notary Public, by said Abner C. Harding, this 21st day of April, A. D. 1909.

(Sgd.) I. EMELIA JERUSALIMSKY,  
Notary Public.

(SEAL)

UNITED STATES OF AMERICA,  
NORTHERN DISTRICT OF ILLINOIS, } ss.  
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding, }  
Complainant, }  
vs. }  
Standard Oil Company of New Jer- }  
sey, et al., } Defendants.

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

Charles B. McCoy, being first duly sworn on his oath deposes and says: That about thirty years ago he was for some years a clerk for the law firm in Chicago of which George F. Harding, Sr., was the senior partner, and has known him and had business relations with him more or less frequently ever since that time, and particularly since the summer of 1895.

That since about the year 1895 he has occupied a desk in



the office of his son, George F. Harding, Jr., and during all that time since the year 1895 he has understood that the legal residence and home of George F. Harding, Sr., was in San Diego, California. That during probably every year of that time until the last four or five years affiant has corresponded with him there, many times forwarding to him and receiving from him legal papers and documents concerning pending business matters.

That for the last four or five years George F. Harding, Sr., has been much of the time in Europe on account of ill health and affiant has corresponded with him more or less continuously, but that affiant's understanding was that he still retained his legal residence in California and has been there part of the time when circumstances permitted.

That since the year 1895 George F. Harding, Sr., has been in Chicago or in the State of Illinois very little of the time and only when called here by business matters or pending litigation requiring his personal attendance, several times having been called here by letter or telegram, and at such times when in Chicago has been a guest at the home of his son, George F. Harding, Jr., coming to the office of his son occasionally when necessary, but his visits being brief, sometimes remaining only a few days and at no time more than a few weeks in Chicago.

That from his knowledge of the circumstances affiant believes himself to be fully informed as to the facts and verily believes that since the year 1895 the legal residence and home of said George F. Harding, Sr., has been in San Diego, California; and further affiant saith not.

(Sgd.) CHARLES B. MCCOY.

Subscribed and sworn to before me, a Notary Public, by said Charles B. McCoy, this 21st day of April, A. D. 1909.

(Sgd.) I. EMELIA JERUSALIMSKY,  
Notary Public.

(SEAL)

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

Gregory T. Van Meter being first duly sworn states, on his oath: I was in the employ of George F. Harding from the year 1886 up to the time of his departure for San Diego, California, when he took up his residence there, being in or about the year 1895, that since that time I have been in the employ

of George F. Harding, Jr., as agent and officer of the Chicago Real Estate Loan & Trust Company; that I have drawn up many papers, affidavits, deeds and legal instruments for said George F. Harding to sign during the last twelve years, stating therein that his residence was San Diego, California.

Affiant further states that George F. Harding since he became a resident of San Diego, California, in or about 1895, has spent very little of the time in Chicago, and only then when compelled to on account of litigation or business, and then only for brief periods of time, leaving as soon as the litigation or business would permit.

Affiant further states that he always understood and heard that George F. Harding left for California, and took up his residence at San Diego, California, on account of ill health, and on account of his only sister and her family living there, and on account of the doctor's advice that the climate of Chicago was bad for his health.

Affiant further states that he has addressed many letters and communications to George F. Harding at San Diego, California, and received answers to same from him dated and mailed at San Diego, California, during said period.

Affiant further states that dozens of such affidavits, deeds and papers have been recorded in the Recorder's office in this county and state by me during the past ten or twelve years, and all of these recite said George F. Harding's residence, as San Diego, California.

Affiant further states that it has been and is a matter of common knowledge among the friends, acquaintances and relatives of said George F. Harding that he has been during more than ten years last past, and still is a resident of San Diego, California.

(Sgd.) GREGORY T. VAN METER.

Subscribed and sworn to before me, a Notary Public, by said Gregory T. Van Meter, this 22nd day of April, A. D. 1909.

(Sgd.) ALICE WILLNER,  
Notary Public.

(SEAL)

UNITED STATES OF AMERICA, }  
 NORTHERN DISTRICT OF ILLINOIS, } ss.  
 EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,  
 In and for the Northern District of Illinois,  
 Eastern Division Thereof.

George F. Harding, }  
*Complainant,* }  
*vs.* }  
 Standard Oil Company of New Jer- }  
 sey, *et al.*, }  
*Defendants.*

Albert B. Joyner, being first duly sworn, deposes and says that he has read the affidavit of William J. Ammen presented herewith; that affiant is now and has been for some years last past associated with said Ammen as a member of the law firm of Ammen, Humphrey & Joyner, in Chicago, Illinois; that from the fall of 1897 until the fall of 1903, he was associated with said Ammen, as a law clerk in and about the affairs of George F. Harding, Complainant in the above entitled cause, and from the fall of 1903, down to the present date, affiant as an attorney, has been associated with the said Ammen in and about the affairs of said Harding, and during said entire period of about twelve years, affiant has been intimately acquainted with said Harding and familiar with his legal affairs, and in or about the year 1897 was informed by said Harding that he, said Harding, was a resident of the City of San Diego and a citizen of the State of California and from said time down to the present time affiant has always understood from said Harding that he, said Harding, has during all said time and still is a resident of said City of San Diego and a citizen of said State of California, and during said time has heard said Harding state a great many times, from time to time, and from year to year, that his, said Harding's residence, was at the respective times of such statements, in said City of San Diego, and during said period affiant has inspected many instruments executed by said Harding wherein the residence of said Harding was stated to be San Diego, California, all of which was done, as affiant is informed by the direction of said

Harding, and during said entire period from the fall of 1897 down to the present hour said Harding has never declared by act or deed to, or in the hearing, or presence of this affiant either in express words or in substance or effect, that his residence in or during said period was at any place other than in the said City of San Diego, California, and from his entire language and conduct during said entire period this affiant was led to believe, and did believe and still believes that said Harding in or about the year 1895, did actually and in good faith, and without any unlawful or improper motive whatsoever, become and remain and still is a resident and citizen of said City of San Diego, and a citizen of California, and this has been the belief of affiant during said entire period; and from such intimate relationship with said Harding, and from his said declarations and conduct above mentioned, this affiant is informed and believes and so states the fact to be that said George F. Harding did in fact become a citizen and resident of said City of San Diego in or about the year 1895 and has ever since remained and still is a citizen and resident of said City of San Diego.

Affiant further states that during said period said Harding has been in Illinois only occasionally and for short periods and then as affiant believes, only when his presence was required by litigation, or business, wherein he, said Harding, was interested as attorney, or a party in interest.

Further affiant saith not.

Dated this 22nd day of April, A. D. 1909.

(Sgd.) ALBERT B. JOYNER.

Subscribed and sworn to before me this 22nd day of April, A. D. 1909.

(Sgd.) ALICE WILLNER,

*Notary Public.*

(SEAL)

UNITED STATES OF AMERICA, }  
 NORTHERN DISTRICT OF ILLINOIS, } ss.  
 EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,  
 In and for the Northern District of Illinois,  
 Eastern Division Thereof.

George F. Harding, }  
*Complainant,* }  
*vs.* }  
 Standard Oil Company of New Jer- }  
 sey, *et al.*, } *Defendants.*

STATE OF ILLINOIS, }  
 COUNTY OF COOK. } ss.

John L. Zweck, being first duly sworn, states on his oath that he was in the employ of George F. Harding, Sr., in Chicago, Illinois, prior to 1895; that after said George F. Harding left Chicago and became a resident of San Diego, California, in or about the year 1895, this affiant was employed by George F. Harding, Jr., and the Chicago Real Estate Loan & Trust Company and has been in the employ of said George F. Harding, Jr., and said Chicago Real Estate Loan & Trust Company ever since said George F. Harding ceased to be a resident of the State of Illinois, and became a resident of San Diego, California, in or about the year 1895; that during the past ten or twelve years he has seen George F. Harding very seldom at his son's office, the former office of said Harding, Sr., or elsewhere in Illinois; that he has known said Harding, Sr., to come to Chicago, and when he left; that said George F. Harding, Sr., has been very little in Chicago, during the past eight or ten years, and then only when compelled to be here on account of business, or litigation, or to visit; that he, affiant, has seen many papers, affidavits, deeds, etc., signed by said Harding, since 1895, all of which stated said George F. Harding's residence as San Diego, California, and affiant always understood and believed that George F. Harding was and still is a resident of California for the past twelve years, or more.

(Sgd.) JOHN L. ZWECK.

Subscribed and sworn to before me this 22nd day of April,  
 A. D. 1909.

(SEAL)

(Sgd.) ALICE WILLNER,  
*Notary Public.*

UNITED STATES OF AMERICA, }  
 NORTHERN DISTRICT OF ILLINOIS, } ss.  
 EASTERN DIVISION. }

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,  
 Eastern Division Thereof.

George F. Harding,  
*Complainant,*

*vs.*

Standard Oil Company of New Jer-  
 sey, *et al.*, *Defendants.*

A. C. H. Snyder, being first duly sworn, states on his oath that he is a nephew of George F. Harding, complainant in the above entitled case, and the son of Mary Harding Snyder, the only sister of George F. Harding, and with whom his uncle, the said George F. Harding, resided in San Diego, California, in the year 1895, and thereafter, and affiant then understood from said Harding that that was the home and residence of said Harding and affiant further states that affiant was a resident of San Diego, California, at or about the time that said George F. Harding moved to San Diego, California, in or about the year 1895, and affiant knows that said George F. Harding both leased and purchased a house in San Diego, California, and always understood since 1895, or thereabouts, that said George F. Harding's residence was and still is San Diego, California, and this affiant has resided in Chicago, Illinois, since the year 1896, and affiant further states that since said George F. Harding acquired his residence in San Diego, California, in or about the year 1895, he, George F. Harding, has been in Chicago, for a small part of the time only, and then only when compelled to be there on account of litigation, or business, or visiting. Further affiant saith not.

(Sgd.) A. C. H. SNYDER.

Subscribed and sworn to before me, a Notary Public, this  
 21st day of April, A. D. 1909.

(Sgd.) ALICE WILLNER,  
*Notary Public.*

(SEAL)

UNITED STATES OF AMERICA,  
NORTHERN DISTRICT OF ILLINOIS,  
EASTERN DIVISION. } ss.

IN THE UNITED STATES CIRCUIT COURT,  
In and for the Northern District of Illinois,  
Eastern Division Thereof.

George F. Harding,  
Complainant,  
vs.  
Standard Oil Company of New Jer-  
sey et al. Defendants.

S. C. DeVeney, being first duly sworn, deposes and says that he is by profession a physician and surgeon and has followed such profession in Chicago, Illinois, for 29 years last past; that for 24 years last past he has resided at 2542 Indiana avenue in said city, affiant's said residence adjoining that of George F. Harding, Jr., at number 2536 Indiana avenue in said City and which said last mentioned residence was formerly the residence of George F. Harding, complainant in the above entitled cause and has, during said time last aforesaid been acquainted with said George F. Harding; that during the last ten or twelve years affiant has seldom seen George F. Harding, in said City, and that during said period, last aforesaid, affiant has always understood that said George F. Harding claimed and now claims to be a resident of the City of San Diego and State of California.

Further affiant saith not.

Dated this 22nd day of April, A. D. 1909.

(Sgd.) S. C. DeVENY, M. D.

Subscribed and sworn to before me this 22nd day of April,  
A. D. 1909.

(SEAL)

(Signed) ABNER C. HARDING,  
Notary Public.

UNITED STATES OF AMERICA, }  
 NORTHERN DISTRICT OF ILLINOIS, } ss.  
 EASTERN DIVISION. }

IN THE UNITED STATES CIRCUIT COURT,  
 In and for the Northern District of Illinois,  
 Eastern Division Thereof.

George F. Harding,  
                     Complainant, }  
                     vs.                         } No. 28,865.  
 Standard Oil Company *et al.* }

Joseph H. Strong, being first duly sworn, states that he lives at 2528 Indiana Ave. in Chicago, Illinois, and has lived there for the last fifteen years or more; that on Sunday afternoon, April 18th, 1909, a man called at my residence asking to see me and gave his name as Mr. Isham or some such similar name. He asked me how long George F. Harding had lived at No. 2536 Indiana Ave. in said City of Chicago, and does he not live there now. I told him that Mr. Harding had not lived there of twelve years or more. He thought I must be mistaken; I told him that I was not mistaken, that I knew when Mr. Harding ceased to live at 2536 Indiana Ave. because I heard then and from him and the coachman he was going to California, and he gave up his horses and carriages. I hired his coachman, Daniel Haney, who had been with him for years, and who remained with me. Shortly after the man left, I telephoned to George F. Harding, Jr., at his residence, and stated what had occurred then, and what I have stated in this affidavit, as to dates and conditions, and which I believe to be true.

(Sgd.) JOSEPH H. STRONG.

Subscribed and sworn to before me, a Notary Public, this 22nd day of April, A. D. 1909.

(Sgd.) LILLIAN NEWHOUSE,  
                     Notary Public.

(SEAL)



UNITED STATES OF AMERICA, }  
 NORTHERN DISTRICT OF ILLINOIS, } ss.  
 EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,  
 In and for the Northern District of Illinois,  
 Eastern Division Thereof.

George F. Harding, }  
                                   Complainant, }  
                                   *vs.* }  
 Standard Oil Company of New Jer- }  
                                   sey *et al.* }  
                                   Defendants.

STATE OF ILLINOIS, }  
 COUNTY OF COOK. } ss.

Ada E. White (nee Lucht), being first duly sworn, deposes and says that she was from about the second day of December, 1897, until July 23rd, 1908, employed by the Chicago Real Estate Loan & Trust Company, as bookkeeper and stenographer, in Chicago, Illinois; that during said time she prepared or transcribed many papers, deeds and other instruments to be executed by George F. Harding, Complainant in the above entitled cause, and that when the residence of said George F. Harding was stated in any said deeds or instruments or conveyance it was invariably stated as being San Diego, California; that said George F. Harding claimed during said period to be a citizen of California, and a resident of the said City of San Diego, in the said State of California, and that during said time George F. Harding was seldom in the City of Chicago, or State of Illinois, except when, as understood by affiant, pending litigation demanded his presence, and affiant in the course of her said employment addressed and mailed many letters and other communications to said George F. Harding, at San Diego, California.

(Sgd.) ADA E. WHITE.

Subscribed and sworn to before me this 22nd day of April, A. D. 1909.

(SEAL)

(Sgd.) ALICE WILLNER,  
 Notary Public.

UNITED STATES OF AMERICA, }  
 NORTHERN DISTRICT OF ILLINOIS, } ss.  
 EASTERN DIVISION. }

IN THE UNITED STATES CIRCUIT COURT,  
 In and for the Northern District of Illinois,  
 Eastern Division Thereof.

George F. Harding, }  
                                   Complainant, }  
                                   *vs.* }  
 Standard Oil Company of New Jer- }  
 sey *et al.*                               Defendants. }

STATE OF ILLINOIS, }  
 COUNTY OF COOK. } ss.

Anna M. Burson (nee Johnston), being first duly sworn deposes and says, that she was during the time from September, 1904, until December 16th, 1908, employed by the Chicago Real Estate Loan & Trust Company, as stenographer; that during the course of said employment, she transcribed or prepared many deeds and other instruments to be signed by said George F. Harding and that when the residence of George F. Harding, complainant in the above entitled cause was stated in said deeds or instruments, it was invariably stated to be San Diego, California, that during said time affiant has written and addressed many letters and communications to said George F. Harding, at San Diego, California, and during said time has always understood said George F. Harding claimed to be and was and still is a citizen and resident of California, and a resident of the said City of San Diego.

Affiant further states that during said time said George F. Harding has been in Chicago, Illinois, very seldom.

Further affiant saith not.

(Sgd.) ANNA M. BURSON.

Subscribed and sworn to before me this 22nd day of April,  
 A. D. 1909.

(Sgd.) I. EMELIA JERUSALIMSKY,  
 Notary Public.

(SEAL)

IN THE UNITED STATES CIRCUIT COURT,  
In and for the Northern District of Illinois,  
Eastern Division Thereof.

George F. Harding,  
Complainant,  
vs. } No. 28,865.  
Hard Oil Company, et al.

Addie C. Harding being first duly sworn upon oath deposes and says that she is of lawful age; and the wife of Abner C. Harding oldest son of George F. Harding, complainant in this case.

I have known George F. Harding for more than thirty years.

In the last twelve years he has always stated that his residence was San Diego, California, his presence here during this period has been for brief periods, and at infrequent intervals and controlled by the necessities of his business.

It has been a matter of common knowledge that his residence and home was with his sister Mary in San Diego, California.

Years ago he gave up all but one of his clubs some five or six and has only been here since as stated visiting relations.

(Sgd.) ADDIE C. HARDING.

Subscribed and sworn to before me this 21st day of April,  
A. D. 1909.

(SEAL)

(Sgd.) I. EMELIA JERUSALIMSKY,  
*Notary Public.*

UNITED STATES OF AMERICA, }  
 NORTHERN DISTRICT OF ILLINOIS, } ss.  
 EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT.

In and for the Northern District of Illinois,  
 Eastern Division Thereof.

George F. Harding,  
*Complainant,* }  
*vs.*  
 Standard Oil Company of New Jer- }  
 sey *et al.* *Defendants.*

STATE OF ILLINOIS, }  
 COUNTY OF COOK. } ss.

Ellen O. D. Harding, wife of George F. Harding, Jr., being first duly sworn states on her oath; that I have resided at the old homestead, No. 2536 Indiana Avenue, in Chicago, Illinois, for the past eight years or more, that during that time and years before I always understood that George F. Harding's residence was San Diego, California; that during her residence at No. 2536 Indiana Ave., the former residence of George F. Harding, he has been very seldom there and then only for very short periods at a time, and then only as a visitor, and this affiant has always understood that he only came to Chicago because compelled to on account of litigation or business, and he was always anxious to get through with it early as possible, so as to get away from Chicago.

(Sgd.) ELLEN O. D. HARDING.

Subscribed and sworn to before me, a Notary Public, by said Ellen O. D. Harding, this 22nd day of April, A. D. 1909.

(Sgd.) I. EMELIA JERUSALIMSKY,  
*Notary Public.*

(SEAL)

The Court further certifies that thereafter the following occurred:

"The Court: The answer may be considered as filed or offered; it has been filed I think.

Mr. Ammen: We have it, have it here of record.

The Court: Has it been filed?

Mr. Ammen: Yes.

The Court: Put it on the files. I will treat this as an order to show cause, to which respondents may at the time of the hearing file their papers. They should have been filed with the clerk.

Mr. Ammen: There was no rule to show cause.

The Court: That would have been proper practice, of course—to have filed it then and to have given Mr. Mayer a copy.

Mr. Mayer: What would your Honor suggest as to our rights to this answer?

The Court: Now, if you desire to combat anything in this answer you shall have the opportunity to do it.

Mr. Mayer: Yes, sir.

Mr. Mayer: Your Honor, as to our reply to their answer, we will prepare it just as soon as we can.

The Court: Yes, you cannot get it here much before the time to which this hearing will be adjourned.

Mr. Mayer: We cannot get it in before Tuesday (May 4th).

Mr. Ammen: We insist—we deny they have the right. We contend they have no right to make any reply. Our answer is in the nature of objections. That is what it is.

The Court (to Mr. Mayer): You say you will try and get it here by Tuesday (May 4th)?

Mr. Mayer: Yes."

Thereupon the argument against said motion to amend said removal petition was made by George F. Harding and William J. Ammen for the complainant. At the conclusion of said argument the further hearing of said motion was continued to 9:30 A. M., May 4, 1909, at which hour and on which date the hearing of said motion was resumed, and thereupon by leave of court there was filed and read to the court on behalf of said Corn Products Manufacturing Company what is styled a "Replication of Corn Products Manufacturing Co. to the objections and answer of George F. Harding, complainant," which replication is as follows:

"Replication"  
Filed by defend-  
ant, May 4,  
1909.

IN THE  
Circuit Court of the United States

IN AND FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION THEREOF.

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George F. Harding, <i>Complainant,</i>	} In Chancery. No. 28,865.
<i>vs.</i>	
Standard Oil Company of New Jersey et al.,	
<i>Defendants.</i>	

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IN THE MATTER OF THE APPLICATION OF CORN PRODUCTS  
MANUFACTURING CO. TO AMEND ITS PETITION FOR RE-  
MOVAL.

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REPLICATION OF CORN PRODUCTS MANUFACTUR-  
ING CO. TO THE OBJECTIONS AND ANSWERS OF  
GEORGE F. HARDING, COMPLAINANT.

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MAYER, MEYER & AUSTRIAN,  
CALHOUN, LYFORD & SHEEAN,  
*Solicitors for Petitioner Corn Products  
Manufacturing Co.*

LEVY MAYER,  
WM. J. CALHOUN,  
*Of Counsel.*

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IN THE  
CIRCUIT COURT OF THE UNITED STATES  
IN AND FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION THEREOF.

<hr/> <p style="text-align: center;">George F. Harding, <i>Complainant,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">Standard Oil Company of New Jersey et al., <i>Defendants.</i></p> <hr/>	<p style="font-size: 3em;">}</p>	<p style="text-align: center;">In Chancery. No. 28,865.</p>
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IN THE MATTER OF THE APPLICATION OF CORN PRODUCTS MANUFACTURING CO. TO AMEND ITS PETITION FOR REMOVAL.

REPLICATION OF CORN PRODUCTS CO. TO THE OBJECTIONS AND ANSWER OF GEORGE F. HARDING, COMPLAINANT.

Now comes said Corn Products Manufacturing Co., and by way of replication to said objections and answer of said George F. Harding, or so much thereof as it is advised it is necessary or proper to make reply unto, replying says:

1. Said Harding does not deny, and therefore by not denying admits the allegations made in said motion to amend that he

“said George F. Harding never registered as a voter and never voted in the State of California; that he never paid any taxes on real or personal property in San Diego; that his name never appeared either in the city or telephone directories therein; and that he has not been in said San Diego since 1902; that during all of the time that said George F. Harding was in California and since he had and now has most if not all of his property in the State of Illinois.”

2. On or about February 3, 1896, his wife Adelaide M. Harding, filed her bill in the Circuit Court of Cook County, Illinois, against said George F. Harding for separate maintenance; that said proceeding was prosecuted upon the

grounds alleged in the bill and amended bill therein; that said George F. Harding had committed adultery with certain persons named in said proceeding, and had been guilty of abusive and cruel treatment, in consequence of which said Adelaide M. Harding left said George F. Harding's house, and lived separate and apart from him on or about February 1, 1890. On or about July 26, 1897, said Cook County Circuit Court rendered a decree in said separate maintenance proceeding in favor of said Adelaide M. Harding. Said George F. Harding appealed from said decree to the Supreme Court of Illinois, where the decree was affirmed on or about January 9, 1899. Pending said appeal and on or about August 31, 1897, or just about a month after said decree for separate maintenance was so rendered by said Cook County Circuit Court, the said George F. Harding filed a bill in the San Diego County California Superior Court against his said wife for divorce on the alleged ground of desertion. Said George F. Harding testified therein that he resided in San Diego since May, 1895; that he took a lease from his sister Mary R. Snyder, of 1845 First street, San Diego; that he rented the house of her under an agreement that she should live in it, if she could, and take care of the house for him.

To the question put to him on cross-examination, "What is the longest time you remained at San Diego at any one stretch from May, 1895, to August 31, 1897" (the date when he filed his divorce suit), he replied:

"Hard for me to tell. Say two or three months.

Q. What was the longest time you were here?

A. Off and on in other parts of California—went to San Francisco. Went with my sister to Santa Monica, passing along the coast for her health and mine.

Q. What is the longest period you were within the state between the dates I have mentioned?

A. Oh, I was in the state, I should think—

Q. Continuously, I mean.

A. Well, I was—you define continuously, now—I was in the state from time to time during these two years, you know, two years and a half, thereabouts.

Q. I will ask how long you stayed in the county continuously for any one time?

A. I have replied to it that I think two or three times I stayed in the state for periods say of 90 days or thereabouts.

Q. Two or three times you stayed within the state for 90 days?



A. Yes. I am sure of that.

Q. During the time from May 15, 1895, to August 31, 1897, Mr. Harding, I wish you would state to the court what business interests you had in San Diego.

A. I was not in business at all; I was trying to rest; I am now 70 and I thought it was about time I should retire.

Q. When did you leave here after August 31, 1897?

A. Within perhaps a month or two."

The said Harding then and there further testified that: "his sister changed her place of living in San Diego for some reason, and in November, 1897, as I understood it, she went to Denver, Colorado. I think I am not wrong as to the time, but up to the time that she was here I lived with her."

And again:—

"I have always called myself a resident of San Diego since the 15th of May, 1895, and so registered and written my deeds in that way and never voted anywhere else.

Q. You have never voted here?

A. No, sir, never—never was here and voted here at all, but I refused to vote elsewhere and have never resided elsewhere.

Q. How great a proportion of the time, or how much of the time, since May 15, 1895, and up to August 31, 1897, did you spend in the residence at 2536 Indiana avenue, Chicago, at different times?

A. I cannot recall. I do not know. I was there occasionally. I do not know. I do not remember.

Q. You have had considerable business interests in Chicago during all this time?

A. Yes, sir, indeed; very heavy; this case, you know was pending and required a great deal of time;—briefs in the Supreme Court, briefs in the Appellate Court, struggles over various questions connected with it.

Q. How often have you been in Chicago since May 15, 1895?

A. Often been. Very frequently, more after 1897 than earlier because matters were becoming—continuously more dangerous for this estate and there has been more to do, more troubles. My business in Chicago being connected somewhat with getting loans elsewhere in Boston and New York.

Q. How long has it been since you were here the last

time, previous to your present visit?

A. Perhaps three months. I do not recall precisely, at the lowest, three or four months. I really cannot tell you.

Q. What was it originally brought you to California, Mr. Harding?

A. Health and my only sister residing here 15 years.

Q. Had you ever visited your sister here before?

A. Yes, sir, I think once in 1894—once or twice.

Q. Ever before that?

A. Never.

Q. Have you ever made any attempt, Mr. Harding, to be registered as a voter here?

A. Never.

Q. Where are you residing now, here?

A. In what place in this town? I hold my residence still here and never made a residence anywhere else.

Q. I asked you where in fact you are living now?

A. Where I am stopping?

Q. Yes.

A. I am stopping at the Hotel Coronado.

Q. Have you been over there ever since you came, have you?

A. Yes, sir.

Q. This last time?

A. Yes, sir.

Q. Where have you stopped previously to this present visit, since your sister went away in the fall of 1897?

A. I have stopped at different hotels when I have been here since that time, the Brewster, and Coronado, whatever they were, I do not think I have stopped with any private parties since then, but always with my sister before.

Q. You never had any regular quarters since your sister went away?

A. No, I have not, the house was occupied, you know, and all that.

Q. Have you any business interests here now?

A. If I understand the words business interests—it is a peculiar term—I have not; in short, you better ask me if I had been in business here. I have not and I am not."

3. Though said Adelaide M. Harding's bill for separate maintenance was filed on or about February 3, 1890, in said

Cook County Circuit Court, on account of the bitter contest and frequent appeals referred to in the motion to amend filed herein, a decree was not entered in said cause until on or about January 26, 1897, which decree allowed said Adelaide M. Harding \$6,400 per year for separate maintenance and \$8,000 for solicitor's fees. Nearly a year before said decree for separate maintenance was entered, and while the proceedings were being vigorously and bitterly resisted by said George F. Harding, he executed and delivered to the Chicago Real Estate Loan & Trust Company a deed which was recorded November 25, 1903, in Book 99, page 367, of the Recorder's office of Warren County, Illinois, of which deed the following is a copy:

This Indenture Witnesseth, That the Grantor, Geo. F. Harding, of the City of San Diego, in the County of San Diego, and State of California, for the consideration of Five Dollars (\$5.00), convey and quitclaim to the Chicago Real Estate, Loan & Trust Co. of the City of Chicago, County of Cook, and State of Illinois, all interests in the following described Real Estate; to-wit;

Any and all lands of every kind and description claimed or owned by me in the State of Illinois, and all lots and lands of every description in the City of Chicago, in which I have any right, title, or interest whatsoever, situated in the State of Illinois; hereby releasing and waiving all rights and by virtue of the Homestead Exemption Laws of this State.

Dated this seventh day of September, A. D. 1896.

GEORGE F. HARDING (Seal).

State of Illinois,     )  
County of Cook.     (ss.

I, George F. Harding, Jr., Notary Public in and for said County in State aforesaid, Do Certify that George F. Harding, being George F. Harding, Senior, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument, as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the Right of Homestead.

Given under my hand and Notarial Seal this 7th day of September, A. D. 1896.

GEORGE F. HARDING, JR.,  
(Notarial Seal) *Notary Public.*

Filed for record the 25th day of November, A. D. 1903,  
at 8:30 o'clock A. M.

S. O. TOURTELLATT,  
*Recorder.*

(Book 99, page 367, Warren Co. Recorder's Office.)

Said George F. Harding for many years owned a great part of, if not the entire, capital stock of said Chicago Real Estate, Loan & Trust Company, and was its president until as late as about 1895. The name of said company was formerly that of the Peoria Starch Manufacturing Company, and during the time said George F. Harding was president thereof, its name was changed, on March 27, 1894, to that of Chicago Real Estate, Loan & Trust Company. The said Chicago Real Estate, Loan & Trust Company has been controlled and managed and is now controlled and managed by the sons of said George F. Harding, namely, George F. Harding, Jr., and Abner C. Harding, the said George F. Harding, Jr., having been for years, and now being, the president of said company, and said Abner C. Harding has been at different times the secretary thereof.

4. Said George F. Harding by his said contest of said separate maintenance proceedings, and his frequent appeals to the Appellate and Supreme Courts of Illinois referred to in said motion for leave to amend, resisted payment of the alimony and solicitor's fees so decreed against him, until on or about November 7, 1904, a motion was made in said Cook County Circuit Court proceedings to adjudge said George F. Harding guilty of contempt for not paying the sum of \$33,788.04, the unpaid accumulated amount of separate maintenance and solicitor's fees awarded to his said wife in said Illinois State Court proceedings. On January 5, 1905, in said contempt proceedings said George F. Harding was adjudged guilty, and from said decree of guilt appealed to the Appellate Court for the First District of Illinois. To said contempt proceedings said George F. Harding interposed as a defense that he had secured said decree of divorce from his said wife in said Superior Court of San Diego, California, and that the same had been affirmed by the Supreme Court of California. The affirmance by said California Supreme Court took place

on October 17, 1903 (see *Harding v. Harding*, 140 Cal., 690). The said decision of said Supreme Court of California was, however, reversed *in toto* on or about May 15, 1905, by the United States Supreme Court (*Harding v. Harding*, 198 U. S., 317).

5. In said George F. Harding's affidavit in support of his said answer and objections, he states:

"That he was admitted as a citizen of California to practice law as an attorney in said State after a hearing and motion in the Supreme Court in San Francisco in 1901, or 1902, and a formal license and certificate were issued to him to that effect at the time; that it was in effect the decision of the Supreme Court of California of his citizenship in said State," etc.

On the trial of his said divorce case in San Diego, California, said George F. Harding on or about January 16, 1901, testified on cross-examination as follows:

"I would like to add I have been retired from business for some years everywhere.

Q. You have been retired from all branches of business for some time?

A. All branches of business excepting caring for my own property.

Q. You were not thinking of going into any new business enterprise now?

A. No, indeed; I think I have got to the point where I have got to quit, and hand it over to young men, and I have been at that point for some years."

The statement for admission to the Bar that the applicant is a citizen or resident is an *ex parte* statement, no issue being made or had thereon. The records of the Supreme Court of California which were kept at San Francisco were destroyed in the earthquake and fire of 1906.

In said George F. Harding's affidavit, which is made an exhibit and a part of his said objection and answer, said Harding swears that he went to San Diego because his sister resided there—

"she having urged him to come there at what then seemed to be, apparently, about the close of their mutual lives, both then being near the age of seventy years and suffering from the infirmities of age."

Said George F. Harding, in his affidavit filed in support of his said objection and answer, swears that said divorce case "is still pending and undetermined in California."

The facts are these: The United States Supreme Court, in *Harding v. Harding*, 198 U. S., 317, ordered, on May 15, 1905, that

"The judgment of the Supreme Court of California must therefore be reversed, and the cause be remanded for further proceedings not inconsistent with this opinion."

The Supreme Court of California, accordingly, in *Harding v. Harding*, 148 Cal., 397, on January 2, 1906, upon presentation of said remittitur from the United States Supreme Court:

"Ordered that the judgment and order (of the Superior Court of San Diego County) denying the motion for a new trial be, and the same are hereby, reversed, and the cause remanded to the Superior Court of San Diego County for further proceedings not inconsistent with the opinion of the United States Supreme Court and this opinion."

And the application for a rehearing and modification of the opinion of the Supreme Court of California was denied on or about February 1, 1906.

On or about February 2, 1906, the remittitur of the United States Supreme Court and of the Supreme Court of California was filed in said cause in said Superior Court of San Diego County. No further steps or proceedings, whatsoever, have been had in said cause, except the entry of the appearance therein, on or about February 19, 1906, of T. W. Hubbard, of San Francisco, California, as attorney for said Adelaide M. Harding.

6. In said George F. Harding's said objection and answer he swears, in paragraph 14 thereof, as follows:

"During the period of more than ten years last past whenever in making deeds or other instruments of writing, or in registering at hotels, as he has had occasion to do for, perhaps, a thousand times, during said period he has always stated in such instruments and upon such hotel registers his residence as San Diego, in the State of California."

Said George F. Harding testified in his divorce proceeding in California that he had taken up his residence there on May 15, 1895.

The said Corn Products Manufacturing Company now has in its possession true and correct copies of a large number of deeds of conveyance and other instruments, under seal, in which said George F. Harding is described as being of the "City of Chicago, County of Cook and State of Illinois," or

"of the County of Cook and State of Illinois," which deeds are recorded in various counties of the State of Illinois, a very considerable number of which instruments are acknowledged before said George F. Harding, Jr., as a Notary Public in Cook County, Illinois, and another very considerable number of which instruments are acknowledged before Albert B. Joyner, a Notary Public in Cook County, Illinois, being the same Albert B. Joyner who appeared as the solicitor of record in this suit for said George F. Harding in the Superior Court of Cook County; that some of said instruments were executed in 1895 (after June 1, 1895), others in 1896, others in 1897, others in 1898, others in 1899, others in 1900, others in 1901, and others in 1902, during the very years that said George F. Harding claimed in said divorce proceedings to have been a resident of said State of California. Some of said instruments were executed by said George F. Harding in 1902 (after January 31, 1901, the date of said California divorce decree), and in the instruments last aforesaid said George F. Harding describes himself as being unmarried, the date of the execution of these deeds having been after his said alleged divorce decree.

A brief synopsis of a few of said instruments, picked out at random, is as follows:

(A) "A warranty deed, describing George F. Harding thus: 'the grantor, George F. Harding (unmarried) of the City of Chicago, in the County of Cook, and State of Illinois,' etc. The grantee therein is August Welander, and the property described therein is located in Peoria, Peoria County, Illinois. The deed is dated June 23, 1902. It was acknowledged before said Albert B. Joyner, as a Notary Public of Cook County, Illinois, on June 23, 1902, and is recorded in Book E-I, page 194 of the records of Peoria County, Illinois.

(b) Another of said deeds describes said George F. Harding thus: 'The grantor, George F. Harding (unmarried), of the City of Chicago, in the County of Cook, and the State of Illinois,' etc. The grantee therein is Emmet Illingsworth, and the property described therein is located in the City of Peoria, Peoria County, Illinois. The deed is dated June 23, 1902. It was acknowledged before said Albert B. Joyner, as a Notary Public of Cook County, Illinois, on June 23, 1902, and recorded in Book N. I., page 49, in the Recorder's Office of said Peoria County, Illinois.



(c) Another of said instruments is a quit-claim or release in which said George F. Harding is described as 'George F. Harding, of the City of Chicago, of the County of Cook and State of Illinois,' etc. The quit-claim and release runs to Almon F. Dodge and Elizabeth Dodge, his wife, of Winnebago County, Illinois, and conveys property located in said Winnebago County; is dated March 13, 1900, is acknowledged before Edgar Madden, a Notary Public of Cook County, Illinois, on March 14, 1900, and was recorded on March 15, 1900, in Book 138, page 149, in the Recorder's Office of said Winnebago County.

(d) Another of said instruments is a quit-claim deed in which said George F. Harding describes himself thus: 'George F. Harding, executor of the estate of A. C. Harding (deceased), of Chicago, in the County of Cook, and State of Illinois,' etc. The conveyance is to the Board of Education, School District Ten (10) of Monmouth, County of Warren, Illinois. It is dated January 28, 1899, was acknowledged before said Albert B. Joyner, a Notary Public of Cook County, Illinois, on January 28, 1899, and recorded in Book 92, page 345, in the Recorder's Office of said Warren County.

(e) Another of said instruments is a quit-claim or release of mortgage in which the grantor is described as: 'George F. Harding, of the City of Chicago, of the County of Cook, and State of Illinois,' etc. The release runs to Edward Seitz, of Peoria, Illinois. It was acknowledged before said Albert B. Joyner, a Notary Public of Cook County, Illinois, on July 29, 1898, and was recorded in Book Q-H, page 371 in the Recorder's Office of said Peoria County.

(f) In another of said instruments the grantor is thus described: 'George F. Harding, of the County of Cook and State of Illinois,' etc. It is a quit-claim and release running to Joseph B. Johnson, of Peoria County, Illinois. It is dated January, 3, 1898, was acknowledged before said Albert B. Joyner, a Notary Public of Cook County, Illinois, on January 3, 1898, and was recorded in Book M. H., page 592, in the Recorder's Office of Cook County, Illinois.

(g) Another of said instruments is a quit-claim and release made by the Firemen's Insurance Company unto 'George F. Harding, of the County of Cook and State of



Illinois,' of which company said George F. Harding was at one time president. Said release is executed in the name of said Firemen's Insurance Company 'by A. C. Harding, President,' said A. C. Harding being the son of said George F. Harding. Said instrument is dated February 24, 1896, was acknowledged before said Albert B. Joyner, a Notary Public of said Cook County, Illinois, and was recorded on February 25, 1899, in Book 136, page 589, in the Recorder's Office of Winnebago County, Illinois, and quit-claims and releases real estate located in said county.

(h) Another of said instruments is a similar quit-claim and release from said Firemen's Insurance Company unto said 'George F. Harding, of the County of Cook and State of Illinois.' Said release is executed in the name of said Firemen's Insurance Company, by Abner C. Harding, as President; it is dated March 1, 1896, was acknowledged before said Albert B. Joyner, a Notary Public of said Cook County, Illinois, and was recorded on March 6, 1900, in Book H., page 44, in the Recorder's Office of Bureau County, and quit-claims and releases real estate located in said Bureau County, Illinois."

7. On or about May 24 1901, said George F. Harding made and delivered to the municipal authorities of said City of Chicago, and particularly to the Committee of the City Council of said City on Local Transportation, the following proposition:

CHICAGO, May 24, 1901.

*To the Committee upon Local Transportation:*

I respectfully call your attention to the fact that the proposition heretofore made by me and submitted to the Mayor and Common Council, of which a copy is hereto attached, is again made and renewed by me and to that end is now herewith submitted to your committee for consideration and acceptance.

With all due respect, I beg to advise you that I am able and willing to perform and comply with this proposition should a contract be awarded me, according to its terms: and you are especially advised that I will consent to any modification of the same found by you, necessary or proper, to effect the end, or for the purposes, therein stated.

I should greatly prefer that some person or persons other than myself should be given the contract upon the same terms,

and will gladly yield to some higher or better bidder for this valuable property; but I make this offer as the only way open to save the City from further injustice, and the present tenants should be required, at least, to meet these terms.

I will further pay the costs of whatever litigation shall be required to enforce the City's rights as against the said corporations, now in possession of its streets, and to enable the city to have judicially determined its rights to own and lease said surface lines of railway.

Out-going tenants who now deny the title and rights of their landlord, corporations who have made, during the forty years of the donations of the streets to them, many millions and distributed many fortunes to their stockholders, and who have all the time refused to submit to the reasonable requirements of the Common council and have evaded the payment of taxes, amounting, it is believed, to a million dollars a year—such faithless tenants ought not to be entitled to a further preference, and can not complain if the City shall now resume possession of its streets, or shall let or dispose of its property or rights as in other cases to the highest bidder.

*I shall insist before you and before the courts, if need be, that the Common Council can not give away this property of the City, to-wit, its rights to buy these railways and let them again, if the Common Council see fit, on better terms than those which they are now held by the present occupants of the same; and that this property, considered as a franchise in our streets, is worth many millions of dollars to this City.*

Hence it is clear that you ought not, and in obedience to your oaths of office can not, deal otherwise with said property; and you should not negotiate with said occupants or grant to them any interest in or power over said railways, upon the basis of their right to the same: except as such out-going tenants, who entered and must hold under the ordinance of August 16, 1858 (see Chicago laws and ordinances, 1866, pp. 393-8), and for greater certainty I attach a copy of said ordinance. The position of the City should be that said tenants have no other rights than under said ordinance, and can gain nothing by dealing with the Legislature for rights adverse to their landlord, and whatever grants they obtained, they claim or set up, must enure to the benefit of this City.

That to treat said occupants as owners of said property, is a surrender of the rights of the City and hence any gift or grant upon that basis, is as far out of your power, as honest men, as if you and at your instance, the Common Council

should pass an ordinance to grant to your friends or other third parties, the Court House or the contents of the City Treasury.

I venture to respectfully submit that an investigation by the city will prove, as you are no doubt aware, that this is most valuable City property, and the present occupants, who have been enriched by the original grant of twenty-five years, and then by the extension of twenty years, to the amount of some hundreds of millions of dollars beyond their contract with the City, can not complain that said contract, after such extraordinary liberality upon the part of this poor City, shall now be enforced to meet its pressing necessities and to relieve the poverty (due in part to these improvident grants), which has most unjustly inflicted upon many of its long suffering people, great sacrifices, disease and death.

The City should insist upon its right to municipal ownership of these railways and my proposition is to clear away doubts and technicalities, so as to enable the City to enter into its own property as such owner, whenever it shall be ready or willing so to do.

I further call your attention to the fact that it is necessary for the Common Council to elect to buy said lines and pay for them and that under the terms of the grant in said ordinance, until the City shall buy and pay for said railways, the said corporations have the right to operate said railways and remain in possession of your streets; and it is therefore not a question of whether you will adopt municipal ownership, but you are compelled to do so by your original contract with the corporations, unless you indeed intend to give them a perpetual grant of your streets.

Very truly yours,

GEORGE F. HARDING.

PROPOSITION OF GEORGE F. HARDING.

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*To the Mayor and Common Council of Chicago:*

I will give the City of Chicago one million dollars for the lines of street railways in said City, to which the City is entitled under its contract or grant created by the ordinance of 1858; the money to be applied to the payment for said lines upon the appraisement required by said ordinance.

I will provide in any event for the payment of the value of said lines and the indebtedness of the City therefor when ascertained.

I will surrender the lines aforesaid to said City at any time upon the repayment to me of the sums which I shall have expended upon said purchase, with interest, together with said necessary outgoes, costs and expenses as I shall have incurred, less what I shall have received and retained from the use and occupation of said lines, simply stipulating to be made good in said investment before said lines shall be retaken by said City; and books shall be kept by me with full and careful accounts, to be open at all times for inspection and investigation by the City.

I will look for repayment not to the City, but to said lines, thus providing the needed moneys to carry out said grant as created by said ordinance and put an end to the term of the present occupants of the street railways without creating a city debt.

I will lease from the City said lines, giving the City the right at any time to become the owner upon simply repaying the sums, necessarily expended by me, in paying for and in operating said lines after giving credit for all sums received by me from the same—treating me as a trustee for the City.

I will pay to the City 20 per cent of the net earnings yearly from the lines, the same to be applied upon repayment of the outgoes, required for the purchase of said lines from present occupants.

I will reduce the fares upon said lines, including universal transfers thereon, to 3 cents per fare, and so much less as shall seem reasonable from time to time.

I will run cars over the lines better than now run by present lessees or occupants and on 10 per cent. shorter time, and gen-

erally obey the orders of the city authorities in the management and control of the lines, and to the better accommodation of the people, and surrender the lines to the City at any time when repaid only necessary and proper advances and expenditures thereon.

I will make any reasonable modification of this proposition to the end of advancing the City's interests.

I will further pay the costs of whatever litigation shall be required to enforce the City's rights as against the said corporations.

Employees upon the lines shall be entitled to wages such as are paid to the like class or classes of workmen elsewhere in the employment of the City; and they shall hold their positions under like civil service regulations and all differences with them shall be adjusted whenever possible by arbitration, with a view to prevent injustice and consequent strikes.

If the Common Council see fit to further grant upon proper terms to me, as the successful bidder or lessee of the said lines from the City, the right to parallel by duplicate rail or rails, feeding, or tributary or other lines now operated under franchises heretofore granted or not included in said lease, I will lay said rails and operate said lines on the same terms as provided in this proposition, for the lines which shall be let to me.

This grant should be made with a view of ensuring to the new lessee, equal facilities over said lines and to passengers the right to a continuous ride over all the lines upon a single fare with universal transfers.

I will secure this proposition and its performance by paying to the City one hundred thousand dollars and such other and further sums as may be necessary to remove or defeat real or captious objections.

You will kindly note, as the spirit, intention and letter of this proposition, that the chief objection heretofore urged to the exercise of the City's rights to purchase from appraisal, viz., that the City is impotent and can not increase its debt, is meant to be hereby removed; and the City at any time can enter into possession of its streets upon simply paying what it has cost to secure them from the present beneficiaries of their bounty, who have been many times over repaid their investment and have thereby grown enormously wealthy and have been in receipt of money exacted *from our people* which, if in the City's treasury would have removed a burden off the back

of every man in the City and enabled the City to hold its place as the foremost City in the world.

Respectfully submitted,

GEORGE F. HARDING.

All of which is respectfully submitted.

CORN PRODUCTS MANUFACTURING CO.

By.....  
*Its Agent in this behalf.*

MAYER, MEYER & AUSTRIAN,  
 CALHOUN, LYFORD & SHEEAN,  
*Solicitors for Said Corn Products  
 Manufacturing Co.*

LEVY MAYER,  
 WM. J. CALHOUN,  
*Of Counsel.*

State of Illinois,        }  
 County of Cook.        } ss.

HARLEN H. PARMENTER, being first duly sworn, upon oath deposes and says that he is the agent in this behalf of said Corn Products Manufacturing Company; and has full authority to make this affidavit on its behalf; that all of the executive officials of said company are now out of this state; that he has read the above and foregoing reply of said Corn Products Manufacturing Company, and knows the contents thereof, and that said reply is true in substance and in fact.

.....  
 Subscribed and sworn to before me, a Notary Public, this Fourth day of May, A. D. 1909.

.....  
*Notary Public, Cook County, Illinois.*

Said complainant objected to the filing of said reply and to the receipt of the same in evidence, but said objection was overruled and the court stated in response to said objection that the court would assume that what was contained in said replication was denied by the complainant. Thereupon an argument was made by Levy Mayer and W. J. Calhoun in reply to the said argument of said solicitors for said complainant.

The foregoing was all the evidence offered or admitted or heard or considered by the court upon the hearing of said motion to amend said removal petition.

Motion for leave  
to amend re-  
moval petition,  
taken under  
advisement  
May 4, 1909.

Thereupon, on May 4, 1909, the court took said motion under advisement, and afterwards on May 15, 1909, the court filed with the clerk of said court its opinion, upon said motion, which opinion is as follows:

OPINION ALLOWING MOTION TO AMEND REMOVAL PETITION.  
CIRCUIT COURT OF THE UNITED STATES,  
NORTHERN DISTRICT OF ILLINOIS,  
Eastern Division.

George F. Harding,  
*Complainant,*

*vs.*

Standard Oil Co., Corn Products Co.,  
Corn Products Refining Co., Corn  
Products Mfg. Co., C. H. Matthies-  
sen *et al.*,

*Defendants.*

No. 28,865.

SANBORN, J.

Opinion of May  
25, 1909, allow-  
ing amendment.

Motion for leave to amend original removal petition of Corn Products Co. The suit was commenced Oct. 23, 1907, in the Superior Court of Cook County, Illinois, and an amended bill was filed Oct. 25, 1907. On Nov. 5, 1907, Corn Products Co. filed its petition for removal on the ground of separable controversy. On the same day all the other defendants, corporate and individual, filed papers in the state court consenting to and petitioning for the removal. The removal petition, following the original and amended bills, alleged that complainant was a citizen of California, the four corporation defendants citizens of New Jersey, and making no allegation respecting the citizenship of the individual defendants; but stating that five of such defendants were not at the filing of the bill and petition either directors or officers of either of the corporate defendants. The petition stated that said suit presented a separable controversy between complainant and petitioner, and that the matter in dispute "exceeds, exclusive of interest and costs, the sum or value of two thousand dollars." The nature of the separable controversy is not stated, and the individual defendants are assumed to be only nominal



defendants. It seems to have been also assumed that the nature of the separable controversy sufficiently appears from the amended bill.

On the same day, November 5, 1907, notice was given to complainant's solicitor that the petition would be presented to Judge Ball of the Superior Court. On Nov. 6, 1907, this court made an order directing the filing in this court of a transcript of the record of the state court and restraining the further prosecution of the suit by the complainant in the state court; and on the same day the removing defendant filed in this court, in support of and supplemental to the petition for removal, a verified statement alleging the citizenship of the individual defendants, showing that four of the defendants were, at the commencement of the suit, and still are, citizens of Illinois, and that the other individual defendants were citizens of states other than California and Illinois.

Before the proceedings above mentioned a similar suit had been filed in the state court by the Chicago Real Estate Loan & Trust Company against Corn Products Company and others, for the same relief as prayed in the Harding bill. That suit was removed to this court and an injunction issued restraining complainant from further prosecuting the case in the state court. It was claimed by defendants that the bringing of the second suit was a violation of said injunction, and on contempt proceedings brought against Harding and others this court, by order of Dec. 13, 1907, decided that they were in contempt, but they were discharged, but restrained from the further prosecution of the Harding suit. This injunction was issued on the theory that the Harding suit was really the same as the Loan and Trust Company's suit.

After the removal of the Harding suit, and in the fall of 1907, Harding desired to make a motion to remand that suit; and on Dec. 23, 1907, filed a motion to remand on eight grounds, being no separable controversy, no removable cause shown, no diverse citizenship, no statement of the particulars of the alleged separable controversy, that the Standard Oil Co. did not unite in the petition (this is a mistake), and that the removal order is unlawful. The fifth clause of the motion to remand is as follows:

"Because the complainant in said cause was, at the time of the commencement of said suit and at the time of the presenting of said petition for removal therein to said Superior Court, and of the filing of the same therein, a citizen of the State of California, and a citizen of no other



state, and at the times aforesaid was not a resident of the aforesaid district; and Charles L. Glass, Joy Morton, William J. Calhoun and H. G. Herget, defendants in said cause were, respectively, at the times aforesaid, citizens and residents of the State of Illinois, and the other defendants, respectively, were not, at the times aforesaid, citizens of said State of Illinois, or residents of said district, but were, at said times, citizens of states other than said State of Illinois, and not residents, respectively, of said district."

It is claimed by complainant that this motion to remand is based upon *ex parte Wisner*, 203 U. S., 449, 27 Sup. Ct., 150, 51 L. Ed., 264. This is not clear, and the motion is quite different from the one filed in the *Wisner* case. This is not important except that the motion does not distinctly apprise defendants that the *Wisner* case was relied on.

The Circuit Court regarded the motion to remand as unimportant because of the pendency of the prior case of the Loan and Trust Company and would not permit it to be brought on because of the injunction in the first case. Meanwhile, however, the Loan and Trust Company moved for leave to dismiss the first suit. Leave was denied; but on appeal from the injunction order it was held by the Circuit Court of Appeals that it should have been granted. (*Harding v. Corn Products Co.*, Jan. 19, 1909.) The injunction order was reversed, and the bill ordered dismissed.

With the bill in the first suit dismissed the Harding case became the only one pending, and the importance of the removal and the motion to remand, having been before that of little importance, at once became matters of great importance and concern to the respective parties. In this situation, and on April 16, 1909, Corn Products Company applied to this court for leave to amend its original petition for removal so as to allege that Harding was when the suit was commenced, and ever since had been, a citizen of Illinois. It was alleged in the petition for leave to amend that petitioner, in making its original removal petition, relied on and believed the statement of the bill that Harding was a citizen of California, and it did not discover the falsity of such statement until April 12, 1909. Complainant answered the petition, appearing specially and for the purpose only of objection to the jurisdiction of the court, as stated in his petition to remand filed December 23, 1907; and insisting that the court has no jurisdiction, no power or authority to allow or enter-

tain the motion to amend. Other objections are stated, and it is submitted that complainant is and long has been a citizen of California. It is also insisted that if the court has power to allow the amendment it should not do so because complainant constantly insisted on the hearing of his motion to remand, but the court refused to hear him by reason of the injunction; and that if the motion could have been heard it must have resulted in the case being remanded; and, the injunction having been erroneous, complainant should not be thus prejudiced by a situation which prevented him from obtaining a hearing. But the injunction only became erroneous by reason of the refusal of this court to dismiss the first case, on motions made before the injunction order of December 13, 1907, was entered. Complainant at once appealed from that order, and nothing could be done, as a matter of course, while the appeal was pending, in respect to the motion to remand. It seems, therefore, that the motion for leave to amend should be granted, if the power of amendment exists. Defendant relies on *Wilbur v. Red Jacket, etc., Co.*, 153 Fed., 662, a case very much like this, for its procedure in bringing its petition for leave to amend.

In regard to the question of power, it is insisted that no jurisdiction is shown by the original petition for removal, because the suit is not brought in the district of the residence of either the plaintiff or defendant; and since Harding has not consented to sue here, and has waived nothing, the case is not now removable under *ex parte Wisner* and *In re Moore*, 209 U. S., 490. On the other hand it is urged that as the original petition showed diverse citizenship, the general jurisdiction was complete, and the question is one of venue only, of the power of this particular court to proceed. The lower federal courts are hopelessly divided on this precise question, but the practice under the Act of 1789 seems to have been clear.

The Judiciary Act of 1789 contained the provision that no civil suit should be brought against an inhabitant of the United States in any other district than that whereof he was an inhabitant, or in which he should be found at the time of serving the writ. Under this act the question arose whether, in cases of diverse citizenship, or of an alien against a citizen, it was necessary to allege that the defendant was an inhabitant of or found within the district in which suit was brought. In *Gracie v. Palmer*, 8 Wheat, 698, 5 L. Ed., 719, suit was brought in the District of Pennsylvania by aliens

against citizens of New York, and it did not appear that they were inhabitants of nor found in Pennsylvania. On error to the Supreme Court a motion to dismiss was made by Mr. Webster for want of jurisdiction. In overruling the motion Chief Justice Marshall stated that the uniform construction under the clause of the act referred to had been that it was not necessary to aver on the record that the defendant was an inhabitant of or found within the district; and that it was sufficient if the court appeared to have jurisdiction by the citizenship or alienage of the parties. And in *Cooley v. McArthur*, 35 Fed., 372, the precise point here presented was decided by Judge Brown, on a motion to remand, in favor of the jurisdiction. To the same effect are *Express Co. v. Todd*, 56 Fed., 104; 5 C. C. A., 432; and *Scott v. Hoover*, 99 Fed., 249.

Before the decision of *Ex Parte Wisner* in 1906, the decisions of the Circuit Courts of Appeal, and of the Circuit Courts, while by no means uniform, were generally in support of the right of removal, even against the plaintiff's objection. The argument in favor of the removal is stated by Judge Newman in *Rome Petroleum & Iron Co. v. Hughes Specialty Well Drilling Co.*, 130 Fed., 585. The argument is that the place of bringing suit or maintaining it is one of venue, not of jurisdiction, and that the language of section one of the removal act, that no civil suit shall be brought *by any original process or proceeding* in any other district than that whereof defendant is an inhabitant, was intended to exclude removal cases, they not being brought by original process in the federal courts; that section two, providing for removal only of cases of which the federal courts are given jurisdiction by section one, refers only to the first part of section one, by which the jurisdiction is conferred, and not to the clause relating to the district in which suit may be brought. Judge Newman therefore denied a motion to remand a case brought in Georgia by a citizen of South Dakota against a citizen of South Carolina. Judge Newman cites, in support of the ruling that the section refers to the first part of section one alone, the language of the Chief Justice, in *Davidson v. Railroad Co.*, 157 U. S., 201, 39 L. Ed., 672, 15 S. Ct., 563; while the Chief Justice himself, in the *Wisner* case, cites the same case as holding the very opposite. This illustrates the very unsatisfactory situation in which this court finds itself in attempting to decide whether this particular case was removed by the presentation of the removal papers to the State Court, and the docketing and injunction order of this court thereon.

Since the decision of the Wisner and Moore cases there can be no question of the duty to remand on application of a plaintiff who has waived nothing, in the usual case, in the absence of any application to amend. But the narrow and unusual question here presented is whether a federal Circuit Court can possibly have any jurisdiction whatever of such a case as this until the plaintiff consents. If it can, then amendment may be permitted to show that jurisdiction actually exists unaided by consent or waiver; but if not, then a remand is inevitable. *Powers v. Chesapeake, etc. Co.*, 169 U. S., 92, 42 L. Ed., 673, 18 Sup. Ct., 264; *Crehore v. Ohio, etc. Co.*, 131 U. S., 240, 33 L. Ed., 144, 9 Sup. Ct., 692; *Kinney v. Columbia, etc., Assn.*, 191 U. S., 78; 48 L. Ed., 103; 24 Sup. Ct., 30. Suppose a citizen of Maine sues a citizen of Vermont in the District of New Hampshire, and gets valid service of process. Defendant, relying on the Wisner and Moore cases, makes default, and plaintiff takes judgment. Is the judgment valid or absolutely void? Again, suppose in this case Harding makes no general appearance in the federal court, but continues to prosecute the case in the state court, can he be punished for contempt of the docketing and injunction order? In view of the confusion surrounding this question arising from the decisions under the Act of 1887-1888, it is refreshing to refer to the plain, satisfactory and uniform construction of the similar clause of the original Act of 1789, as stated by Chief Justice Marshall in *Gracie v. Palmer, supra*. And in view of such construction, and that a decision in favor of the jurisdiction may be readily reviewed, while a decision against it cannot, the power to amend the petition should be affirmed, and the petition to amend granted, if the individual defendants were merely formal parties defendant. That they were such seems clear to me from the cases of *Geer v. Mathiesen Alkali Works*, 190 U. S., 428, 47 L. Ed., 1122, 23 Sup. Ct., 807, and *Lamm v. Parrott Co.*, 111 Fed., 241.

A further question is raised as to the sufficiency of the statement in the removal petition of a separable controversy. It is usual in such petitions, and generally considered necessary, to allege the nature of the controversy; but if it appears from the record that such a controversy actually existed it is enough. This court, by its docketing and restraining order of Nov. 6, 1907, took jurisdiction of the case, thus sustaining its jurisdiction. This it had the power to do. That order was made more than two terms since, and cannot

now be reviewed in this proceeding, or any other in this court. This was decided in the *Des Moines Nav. Co. v. Iowa Homestead Co.*, 123 U. S., 552, 31 L. Ed., 202, 8 Sup. Ct., 217, approved by the Supreme Court in *Chesapeake & O. R. Co. v. McCabe*, by decision filed April 6, 1909.

I think, therefore, that the petition to amend should be granted. If it were disallowed, and the case remanded, there could be no review. *Ex Parte Pennsylvania Co.*, 137 U. S. 451, 34 L. Ed., 783, 11 Sup. Ct., 141; *Missouri Pac. R. Co. v. Fitzgerald*, 160 U. S., 556, 40 L. Ed., 536, 16 Sup. Ct., 389. Even where the state court proceeds to judgment against defendant the question of removal cannot be reviewed. *Whitcomb v. Smithson*, 175 U. S., 635; 44 L. Ed., 303; 20 Sup. Ct., 248. On the other hand complainant has two remedies, mandamus in the Supreme Court to compel remand, or if a decree goes against him he may have the question reviewed on appeal. *Ex Parte Wisner*, *supra*. Leave to file the amended petition is granted.  
May 15, 1909.

And thereupon, after the filing of said opinion, and on May 15th, 1909, and in accordance with the directions in said opinion of this court, the clerk of the court entered upon his minute book a minute as follows:

"28,865 Chy. Harding vs. Standard Oil Co. Opinion Lv. to deft. Corn Products Co. to amend petn. for removal, etc. (draft.)"

The court further certifies that on May 22nd, 1909, there came on further for hearing before said court a motion of said complainant appearing specially, which motion sought to set aside the leave heretofore given by this court to amend said removal petition, and also sought to strike from the files the so-called replication filed by the defendant, the Corn Products Manufacturing Company, to the complainant's said objections and answer; that the court heard arguments by George F. Harding and William J. Ammen in support of said motion, and argument by Levy Mayer in opposition thereto, and thereupon said motion was taken under advisement.

The court further certifies that said cause came on again to be heard before the court on June 12th, 1909, and further argument was then and there made by George F. Harding and William J. Ammen, on behalf of the complainant, in support of the motion last aforesaid:

Motions of May 22, 1909, to set aside order allowing amendment and to strike the "replication" from the files.

Thereupon the court overruled the motion last aforesaid, which was the motion taken under advisement by the court on May 22nd, 1909, and which motion sought to set aside said leave heretofore given to amend said removal petition, and also sought to strike from the files the said so-called replication.

Order of June 18,  
1909, denying  
said motions  
May 22.

It is further certified that after the motion to strike out the so-called replication was heard, and while the same was under advisement, complainant served upon defendants' solicitors, and submitted to the court in support of said motion to strike out an affidavit of Abner C. Harding, but the same was not filed by the clerk nor read or considered by the court. Such affidavit is as follows:

United States of America,  
Northern District of Illinois, } ss.  
Eastern Division.

Affidavit in sup-  
port of said  
motions of May  
22 not admitted.

IN THE UNITED STATES CIRCUIT COURT.

IN AND FOR THE NORTHERN DISTRICT OF ILLINOIS.

Eastern Division.

George F. Harding,  
Complainant,

vs.

Standard Oil Company of New  
Jersey *et al.*,

Defendants.

In Chancery.  
No. 28865.

ABNER C. HARDING being duly sworn says:

That the so-called replication and its allegations are untrue in substance and in detail.

That said replication was never seen by or shown to complainant until after the hearing; and some days after the conclusions of the arguments of and for complainant and were so concealed and shielded from exposure and answer by complainant and his counsel.

It was not filed by leave of court known to complainant and if filed at all was improperly filed as a pleading as being such pretended replication; with which name it is falsely endorsed; and said replication has therefore obtained its place on the

files by this false pretense and mis-statement and said complainant has therefore made and filed this motion to strike from the files, in aid of which motion this affidavit is made by affiant who is agent for complainant in this behalf.

Affiant further states that said replication is untrue, and inaccurate, in substance as in form.

That the allegations touching complainant, as having never been named upon a telephone directory in San Diego, and other like immaterial and accompanying denials of what complainant has never done, as stated in petition and copied in this replication, all and singular of them, are denied by the affidavit of said complainant, which affidavit was expressly made a part of the "objections and answer" and was filed therewith.

See same in the printed statement of same printed at large on page 105 answer, and 116 affidavit.

Affiant further states, viz., that point 2 of said replication contains a series of mis-statements intended to mislead and deceive the court; and affiant shows amongst others, that it is not true that such bill as therein described was ever filed in 1896.

That no such charges were made therein when said bill was filed, nor were they ever found true by any court or held to be supported by the evidence, that said litigation chiefly related, and for years exclusively related, to the amount of the alimony, and the decision of the Circuit Court, as to the same, was reversed as to the said amount by the Supreme Court in 1899, after complainant had removed to California and for years had resided in and was a citizen of California, as affiant has before stated in his affidavit filed herein; and that such suit for divorce in California had been brought more than two years before said final Illinois decree.

Affiant further states that said Parmenter was not present at the hearing of said California case, and personally can have no knowledge of the testimony of the said Harding, stated in said replication, and of the details of direct and cross-examination of complainant; which in said replication is, so far as concerns said Parmenter, a pure fiction, or some shorthand report of the same; and about the accuracy of which said Parmenter has no personal knowledge whatever.

Point three, of said pretended replication also contains inaccurate and untruthful statements, about which said Parmenter, affiant thereto, had or has no personal knowledge, as would also appear from the said replication. The said Point



3, carefully conceals the fact that said Circuit Court's decree of \$6,400 a year alimony was cut down to \$3,600 a year by Illinois Supreme Court pending said suit for divorce in California. Point 3 declares also that Harding made and recorded in Warren County, Illinois, the deed of the Real Estate Company of extensive property, all his realty in Illinois, therein rightfully or properly describing himself as being of the City of San Diego in the County of San Diego, in the State of California, on September 7, 1896; and said replication, by said Warren County record was meant to conceal the fact that said deed was not alone recorded in Warren County in 1903, but had been long before recorded in Cook County at the very time it was made, viz., on or about the 7th day of September, 1896.

Affiant says that said date and place of said record was meant in order to deceive the court and mislead him by the said Parmenter and his associate Mayer for obvious purposes, so often shown by the said replication throughout.

Affiant further states that his statements touching the Chicago Real Estate Loan & Trust Company, so contained in said Point three of said replication and elsewhere, are totally unknown to said Parmenter personally, and are imperfect and particularly, touching complainant, are untrue; and meant to deceive and mislead.

Point Four; Affiant further says that the statement of said replication made in point 4 and elsewhere, touching alimony, are not only untrue in the particulars above stated, but in all other particulars where any shadow of truth is stated, are in truth changed and mis-stated, for the obvious purpose of deceiving and misleading the court.

That the truth is exactly contrary to the statements of said Mayer and Parmenter.

The whole controversy, in said entire litigation, related to the amount of alimony and attorneys' fees, and was due to the unfounded claim of the claimant and her attorneys, including Miller and Starr, for their exorbitant fees and her alimony; and this very truth complainant made to appear of record by his stipulation of January 3, 1893; in which stipulation he waived and gave the court power to waive, every one of the questions or contentions on his part, as therein stated, including custody of children.

Further affiant states that said claimant demanded as alimony more than \$15,000.00 a year; which sum was more than the entire net income of said complainant at that time; that



complainant offered his wife and she refused from the very beginning, twice the amount of alimony granted by the Supreme Court of Illinois, by its final decree in 1899 reversing that of the lower court; and the long litigation was, ever since 1890, fermented by other parties for other unworthy motives and interests.

That it is utterly false that complainant prevented the collection of said alimony or of the fees, after the amount was declared by the court, for a single hour; that said decrees for alimony and for costs and for fees were always secured by liens on complainant's property during every hour of this period; and their collection from complainant's real estate (said real estate being of a value of more than ten times the amount of said decree) was always within the power of claimants; and said claimants had liens established by recorded decrees upon said real estate ever since they were entered, and were by them also extended to the other realty of said complainant in other counties, with the obvious intention to put said liens, already ten times secured and easily capable of collection by sale of said real estate, upon execution, so as to force the ruin of complainant by such unnecessary and additional liens.

That the Circuit Court of Cook County finally so determined said matter of alimony and fees, and held that the same should be collected from sale of such real estate, which real estate had been long before seized and levied on and even advertised for sale, and then deliberately left unsold; and this was the final action, up to this hour of the said court, in said litigation; and afterward all of said alimony and fees and costs of every description were paid out of sales of said real estate, and they might have been paid for many years before, had said wife and attorneys not refused to bring said real estate to sale.

That the truth is, that said wife of said complainant was only delayed, as to her alimony, because she chose to be so delayed; and that during all the period of said twenty years litigation she had a liberal fortune which complainant had given her before her suit of February, 1890.

Affiant further states that one of the defendants in this case is the Standard Oil Company of New Jersey, who consents to but does not unite in this motion for amendment; that John S. Miller of said Miller and Starr is the attorney of said company; and he was said attorney in the famous case for rebates, before Judge Landis; and was such attorney later

in its behalf in the Court of Appeals when this petition was filed in this court on November 6th, 1907; that said Miller was the attorney and adviser of Mrs. Harding in her said entire litigation here and in California ever since 1892.

That on Nov. 4th, 1907, said Miller was acting in this very court as attorney for said defendant, the Standard Oil Company, and he, said Miller was then a resident and citizen of Chicago and a neighbor of said Mayer, and his associate, and was in possession or fully advised of the record of the several cases described in said petition, and he was the attorney for Mrs. Harding, and as such attorney knew all about the trial in California of her case and the contest there over the residence in California of said Harding, and was in communication with said Mayer; and said Miller attorney for the Standard Oil Company of New Jersey, one of these defendants, and the principal defendant too, as alleged in this bill; they were all known to each other as such attorneys, and Miller is mentioned in this record as Mrs. Harding's attorney by Mayer as shown by the certificate of evidence (Record, 175).

That Miller and Mayer have from the beginning mutually exchanged information as common attorneys of their respective clients, and on November 4th, 1907, Mayer and his clerk, Bangs filed said petition and both knew all about said litigation, repeatedly referred to in said petition of Bangs; and as petition itself declares, viz.: "were familiar with it" and made "careful, exhaustive and diligent search into the facts and circumstances detailed in said motion and petition as Bangs swears and he declared therein that complainant had removed to California and had left Illinois. (That besides the said Mayer was fully advised of said contest over said residence of said Harding, as shown in (140 Cal. Page) reversed by the Supreme Court, U. S. by 198 U. S. (Page ) so often quoted by him and his clerk).

Affiant therefore states that Mayer, attorney of the Corn Products Mfg. Co. knew that on Nov. 4th, and Nov. 6th, when this petition was drafted which he seeks to amend, all matters and things now re-stated in said petition for leave to amend, and he and his client knew fully the facts known and testified to on the hearing of the said case in California, including the matters set forth in said petition as to residence, and it does not appear and cannot be shown that a single fact of any moment was stated in said petition to amend which was not known to said Mayer and his clients all the time ever since Nov. 4, 1907, as sufficiently appears by said petition of Nov. 4, 1907.

As to matters in Point Five, of said replication, affiant states that admission of complainant to the bar was in 1901 and 1902, and was acknowledgment and finding and adjudication of the Supreme Court of California of his being a citizen and resident of said State of California and is binding as such and affiant attaches a copy of said certificate of his admission as a citizen and resident of California which was required by said Court to be proven before such admission was allowed.

Affiant further states that the finding of the chancellor in the California litigation that Harding was a resident of California and the affirmance of same by the Supreme Court as shown in 140 Cal. were left by the order of the Supreme Court of U. S. untouched, by said Court; in whose opinion the question of said residence was not re-considered and the California Supreme Court in (148 California) left the whole case open for further proceedings of said Chancellor, expressly as elsewhere quoted in complainant's answer in this case, thus expressly leaving the technical question of full faith and credit, etc., to be answered by such new answer to said estoppel as may be found or put in the record. That the truth is that the decree of the Illinois Court was not that certified and considered by the Supreme Court of the U. S., and this was due to the fact that the Clerk of the Circuit Court of Cook County was deceived as he testified in a subsequent independent suit, testifying that he certified into the transcript of the record of the Illinois case, a paper, which purported to be a true copy of the record of said decree, but in truth the said paper was not a true copy; and failing to contain the very language on which the reversal was ordered by the Federal Supreme Court.

That the pending of said case in San Diego has been ever since a matter of stipulation, of the parties, chiefly made in the absence of said complainant, who has been for so many years since 1902, ill and in Europe in Sanitariums and in charge of physicians for many years, and ever since 1902.

As to Point 6, Affiant states that he believes it to be a tissue of falsehoods.

That if it were true as stated therein, viz.: "The Corn Products Manufacturing Co. has in its possession true and correct copies of a large number of deeds and conveyances and other instruments" in which complainant was described as being in Illinois "and that a brief synopsis of said instruments picked out at random is as follows"; all of which affiant declares, was untrue, yet affiant says the said defend-

ant could and should have shown in full the said certified copies it professed to have in hand, instead of Parmenter's "synopsis."

That the deliberate concealment and suppression of the said copies by said Mayer is indicative that said "Synopsis" is false and misleading; and therefore petitioner is suppressing the truth, in accordance with the other falsehoods of said replication; and affiant alleges that the said deeds and instruments do not exist as therein stated and complainant's residence was not given therein as stated and was certainly not so stated with the knowledge of said complainant.

That affiant knows and has examined the records in Cook County and State, that there are more than ten deeds of said complainant recorded in said County to one recorded elsewhere and in the distant counties described in said replication, and affiant has not been able to find one in which complainant was described as a resident of Illinois; and had there existed such it would be much more to the purpose than the alleged synopsis.

That this replication purports to be a reply to complainant's answer and affidavit of April 22nd, 1909, viz.: where it is stated that during the period of more than ten years past whenever in making deeds and other instruments or in registering at hotels, as he had occasion to do for perhaps a thousand times, during said period, he has always stated in such instruments in such hotel registers his residence in San Diego, in the State of California," and affiant states that it is an utter and absolute falsehood that the "few of said instruments picked out at random" of said synopsis are, even as there stated in said Parmenter's statement of the contents.

That the statement on its face is imperfect and deliberately given in the place of alleged copies; that complainant asked said Mayer when presenting said false replication in open court that the said alleged copies might be allowed to be seen by complainant, so as to answer same; and said Mayer at once refused them in open court, no reason being given except his declaration then made, in reply, that he would not allow the same to be seen.

Affiant further states that he is informed and believes that no such deeds exist, as stated in said replication; and no such copies can be produced; but dealing with the synopsis on its face, affiant states and calls attention to the fact that there are only eight deeds and of the alleged eight deeds, two of them on their face are not made by complainant at all; and if such

deeds were made at all, as stated, they were made thirteen years ago; that all the others, save two, purport to be made more than ten years ago.

That the remaining two deeds purport to be made about seven years ago, and relate to property in Peoria County, Illinois, being town lots of small value which complainant *has never owned*, if at all, for many years.

That all the real estate that could have been conveyed by said alleged deeds must have been such property never owned by said complainant and in which he could have had no interest since he removed to California; and this is shown by the Replication itself in which he is stated to have made a conveyance in 1896 of all his Real Estate; and in which deed he declared himself to be a resident of California and of San Diego (See Page 6) of Replication.

Affiant further states that if copies of the two deeds "picked at random" can be produced, he believes that they will prove to be untruly stated in said replication; and probably not deeds by complainant at all; and that at most these two deeds alone will be found out of a thousand to the contrary, the remainder stating the truth as in the deed of 1896; and if such errors of description were made, said errors were due to accident, carelessness in drawing said unimportant deeds, or by clerical blunders of some clerks, upon whom a man of complainant's years, nearly eighty years, must necessarily depend; and they escaped his notice, and it will appear, when the truth is fully shown, that these statements of this replication are entirely false and not worth consideration, two and only two descriptions of complainant's residence standing against a thousand other descriptions of said residence.

Affiant further states that the said proposition alleged to have been made to the Municipal authorities of Chicago was objected to and refused amongst other reasons because said complainant was not at the time a citizen and resident of Illinois, but of California, as he was then very well known to be, and as he has always been known to be such a resident; and as more fully is shown by the numerous affidavits, nearly twenty in number filed therein and treated as attached to this answer and objections; and affiant says similar affidavits could be secured indefinitely from former neighbors and friends, countless in number.

That the motives of said complainant in making said proposition appears by said proposition itself; and the following clause of said proposition will be sufficient to show that com-

plainant still regarded and was moved by a love for his former residence and the people of Chicago and could properly describe them as our city and our streets; and that by said proposition he was only seeking to aid them in protecting their property and not seeking additional or new labor at his age, the clause is as follows:

"I should greatly prefer that some person or persons other than myself should be given the contract upon the same terms, and will gladly yield to some higher or better bidder for this valuable property; but I make this offer as the only way open to save the City from further injustice, and the present tenants should be required, at least, to meet these terms."

Further deponent saith not.

ABNER C. HARDING.

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

ABNER C. HARDING, being duly sworn, says that he is familiar with the matters stated in said affidavit and is informed and believes he is fully acquainted therewith and he states that said foregoing affidavit by him subscribed is true to the best of his knowledge, information and belief.

ABNER C. HARDING.

Subscribed and sworn to before me, a Notary Public, this 21st day of May, A. D. 1909.

ALICE WILLNER,  
*Notary Public.*

(SEAL)

"Alice Willner  
Notary Public  
Cook Co. Ill."

The Court further certifies that the following petition was presented by complainant on June 30, 1909, but was not permitted to be filed:

Petition of Harding presented  
June 30, 1909  
not allowed to  
be filed.

PETITION DATED JUNE 29 AND PRESENTED JUNE 30, 1909.

United States of America,  
Northern District of Illinois,  
Eastern Division. } ss.

IN THE UNITED STATES CIRCUIT COURT,  
In and For the Northern District of Illinois,  
EASTERN DIVISION THEREOF.

George F. Harding,  
Complainant, } In Chancery,  
vs. } No. 28,865.  
Standard Oil Company of New Jer-  
sey, et al., Defendants. }

Now comes the said complainant, George F. Harding, appearing specially herein, and, while saving and reserving, and preserving his objections heretofore made to the jurisdiction of this court in this cause, as stated in his motion filed herein on December 23, 1907, to remand said cause to the State Court and as otherwise stated of record in this cause, and still insisting that this Court has not and never had any jurisdiction of or in this cause, or over or against this complainant in said cause, or any authority or power therein except to remand the said cause to the State Court, and saving and reserving, and preserving his objections and exceptions to the several orders of this court in this cause, and every of them, and every part thereof, and insisting that all and every of said orders, including, particularly, the order permitting amendment to removal petition in said cause, were and are without power or authority or jurisdiction on the part of this court, and therefore wholly null and void, this complainant respectfully represents and states to the court the following, namely:—

1. That the Corn Products Refining Company (one of the defendants in this cause, and one of the defendants in the suit in Chancery brought by the Chicago Real Estate Loan & Trust Company, an Illinois corporation, as complainant, against the said Corn Products Refining Company, and others, as defendants, in the Circuit Court of Cook County, Illinois, on May 4, 1907, and removed to this Court on June 8, 1907,



being a suit in chancery numbered 28695 in this Court) presented to this Court on November 4, 1907, its petition (or motion) entitled and filed in the said Real Estate Company's suit, purporting to be sworn to upon that date by one Hal C. Bangs, which petition (or motion) now remaining on file in the said suit Numbered 28695 is hereby referred to and made a part of this petition, and an exhibit hereto.

2. The said petition (or motion) of November 4, 1907, was so presented on that date to this Court in said suit numbered 28695, by one Levy Mayer, acting as the attorney and solicitor of the said petitioner, *ex parte*, and without notice to and without the knowledge of the said Real Estate Company, or this complainant, or any other person, or persons, other than the said Corn Products Refining Company, and upon such presentation thereof an order was entered in said suit numbered 28695 by this Court on that date, November 4, 1907, *ex parte*, and without notice, as aforesaid, restraining this complainant, George F. Harding, and his solicitor, A. B. Joyner, from further prosecuting this suit, now numbered 28865, in this Court, and then pending in the Superior Court of Cook County, Illinois, until the hearing and disposition of said petition (or motion) for injunction, and ordering this complainant, and the said A. B. Joyner to show cause on November 12, 1907, why an injunction should not issue against their further prosecution of *this* suit, to which order of November 4, 1907, reference is hereby made, and the same, as a part of the record in said Real Estate Company case, is made a part of this petition, and an exhibit hereto.

3. On November 5, 1907, the Corn Products Manufacturing Company filed in *this* suit (now No. 28865) in the said Superior Court of Cook County, its petition, in the said State Court, for removal of this cause to this court, and on the same date gave notice to the said A. B. Joyner, as the solicitor for your complainant in said cause (now No. 28865) that, on Wednesday, November 6, 1907, at the hour of 10 o'clock A. M., the said petition for removal would be presented before his Honor, Judge Ball, then and still one of the Judges of the said Superior Court, in chancery sitting, which said petition for removal and said notice now appear of record in *this* cause (now No. 28865) and the same are hereby referred to and made a part of this petition, and exhibits hereto.

4. Instead of waiting, however, for the said Judge Ball to pass upon the said petition for removal, the said Corn Products Manufacturing Company, without notice to and



without the knowledge of this complainant, and without notice to and without the knowledge of any solicitor or agent of this complainant, appeared before this Court on November 6, 1907, and obtained an order granting leave to the said Corn Products Manufacturing Company to file in this Court a transcript of the record of the said Superior Court of Cook County, in *this* cause, and staying the further prosecution thereof in the said State Court, and enjoining this complainant, George F. Harding, his agents, representatives, counsel, solicitors and attorneys, from proceeding further with the prosecution of said cause in the said Superior Court, until the further order of this Court, to which order of November 6, 1907, reference is hereby made and the same is hereby made a part of this petition, and an exhibit hereto.

5. And on the said date, November 6, 1907, said Corn Products Manufacturing Company, also filed in this cause in this Court, without leave of Court, and without notice to, and without the knowledge of this complainant, or any agent, or attorney, or solicitor of this complainant, a certain so-called supplement to its said Removal Petition, said so-called supplement having attached thereto the affidavit of G. W. Powers, purporting to be sworn to by said Powers, on November 6, 1907, to which supplement, with said affidavit, reference is hereby made and the same is hereby made a part of this petition, and an exhibit hereto.

6. As soon as this complainant, George F. Harding, learned of the said entry of the said order of November 6, 1907, in this cause, this complainant applied to this court for leave to present his motion to remand this cause to the said Superior Court, and, on December 23, 1907, this complainant filed herein his motion in writing to remand this cause to said Superior Court, and presented the same to this Court, before Judge Landis, on December 26, 1907, and then asked that the said motion to remand filed in this cause be granted by this Court, but the said Judge thereupon refused to grant the same, and then stated that the same would not be allowed, and, thereupon, at the instance of said Mayer, as solicitor for defendant in said cause, entered an injunction in that suit, Numbered 28695, under date of December 13, 1907, restraining this complainant from further proceeding with his said motion to remand this cause, and from taking any other steps whatsoever in this cause, the said proceedings of November and December, 1907, being in the said suit No. 28695, as shown by the record of this Court in that cause, including the Cer-

certificate of Evidence signed by said Judge Landis, and filed in that cause on April 30, 1908, to all of which record, including said certificate of evidence, and including the petition for and allowance of appeal from said order entered under date of December 13, 1907, reference is hereby made, and the same is made a part of this petition, and presented herewith as an exhibit to this petition, and your petitioner prays that the same may be made a part of the record in this cause, No. 28865, in order that all the facts touching his said motion to remand this cause to said Superior Court may be thus made a part of the Record in this cause, numbered 28865. And on the 29th day of June, 1907, the mandate of the United States Court of Appeals, for the Seventh Circuit, showing, among other things, the reversal of said order of date December 13, 1907, was filed in this Court, in said cause, No. 28695, to which mandate reference is hereby made and the same is made a part of this petition, and an exhibit hereto, so that now for the first time this complainant is free to move in this cause for remand of the same to said Superior Court.

7. By way of further precaution, and to prevent misunderstanding, this complainant now requests and moves this court to now enter an order herein upon his said filed motion to remand, based upon the said proceedings and record of November and December, 1907, and upon the said petition for removal, as it then stood in this cause, when the said motion to remand was filed herein, and when the said motion to remand was then refused even a hearing, and thus denied, and enjoined, by this court, and held and declared by this court to be disposed of and covered and enjoined by the said injunction in the said Real Estate Company's suit; with only the right given to this complainant to apply for leave to intervene in the said Real Estate Company's suit, and reserving the right and power to compel this complainant to dismiss this suit, as shown by the said record in the said Real Estate Company's suit, which injunction has now been reversed by the United States Circuit Court of Appeals, of the Seventh Circuit, as shown by the said Mandate of that Court this day filed in this Court in the said Real Estate Company's suit, to which mandate reference is hereby again made, and the same is made a part of this petition, it, thus, thereby appearing, and this petitioner, said George F. Harding, also states, that this present date is the first day on which any steps could be taken in this present suit by this complainant since the said entry of the said order of November 4, 1907,

the said injunction order of date, December 13, 1907, by and pursuant to said mandate being on this date, for the first time vacated, and set aside, and the said suit of said Real Estate Company, and said petition (or motion) of November 4, 1907, having been this day moved by said Real Estate Company to be dismissed by order of this Court, pursuant to said mandate to which order of dismissal when entered pursuant to said motion this day made, reference is hereby made and the same is hereby made a part of this petition, as an exhibit hereto.

Wherefore, this complainant represents and shows to this Court that this complainant is now entitled to have entered of record herein an order remanding this cause to said Superior Court, on his said motion to remand filed herein on December 23rd, 1907, the same order as this complainant was said removal petition herein be disregarded by this Court to grant the same, and the same was then wrongfully and unlawfully refused and enjoined by said order of December 20, 1907 entered under date of December 13, 1907, this cause having been surreptitiously and wrongfully and unlawfully removed to this Court and thus held in this Court as above set forth, and this complainant now prays that such order remanding this cause to said Superior Court be now entered herein, accordingly; and to the end that all obstacles that may be or be claimed to be in the way of such remand, may be removed, this complainant further requests and moves the Court to wholly disregard said supplement filed herein on November 6, 1907, and, if need be, that the same be stricken from the files, and that the petition filed herein on April 10, 1909, for leave to amend said removal petition herein, be disregarded by this Court, and, if need be, stricken from the files, and that the order of this court permitting amendment to said removal petition herein be disregarded by this Court, and, if need be, vacated and set aside, and that the amendment filed herein on June 14, 1909, to said removal petition be disregarded by this Court, and, if need be, stricken from the files, and this complainant respectfully represents and states that the averments in said amendment filed herein on June 14, 1909, that this complainant was, on October 19, 1907, or since that date, a citizen of Illinois, and a resident of the City of Chicago, in said State, are entirely untrue, and, in fact and in truth, this complainant, George F. Harding, was, on October 19, 1907, and continually since has been a resident and citizen of the State of California and of no other state or country; and this complainant further respectfully shows

while protesting and objecting, as above stated, against the efforts of the Corn Products Manufacturing Company herein, to amend its said removal petition herein, and protesting and objecting that the allowance and filing of the said amendment were and are contrary to all precedent and the practice of this Court, and in violation of the law, and that said amendment is a mere attempt to defeat the restrictions upon the jurisdiction of this Court, imposed by the Acts of Congress of 1887-1888, as declared and enforced by the United States Supreme Court in the case of *ex parte Wisner*, and a mere repetition of the same effort attempted by said injunction above set forth, and this complainant having denied and still denying the said allegations of citizenship made in said amendment, as elsewhere more fully shown of record in this case, respectfully prays that this Court will promptly pass upon this complainant's said motion to remand this case upon the basis of the said written motion filed herein on December 23, 1907; and this complainant further prays that in the event this Court shall deny the said motion to remand, that your petitioner be permitted to join issue upon the said averments of citizenship in the said amendment to said removal petition, without waiving his rights and contentions set forth in this petition, and that a prompt hearing be had upon said issue of fact, to the end that a petition for mandamus may be presented promptly by this complainant to the Supreme Court of the United States, to compel a remand of this case to the State Court at the earliest possible moment, to-wit: at the beginning of the October term A. D. 1909, of said Supreme Court, so that one and the same petition for mandamus may present completely to that Court the entire action of this Court, in the premises, together with whatever evidence may be presented upon said issue of citizenship, all to the end that there may be a speedy administration of justice in this case, and technical obstacles be avoided, and possible injustice prevented that might arise out of or result from a partial submission in such petition for mandamus of the rights of this complainant to have this cause remanded to the said Superior Court, where this complainant claims he has a constitutional right, under the law, to have this case heard, of which right he has been so long deprived by said injunction of this court and by the action of the defendants herein; and your petitioner prays that the right of this complainant to have his said motion to remand this cause to said Superior Court allowed upon the record

herein, as it existed at the time said motion to remand was filed herein, and presented to this Court, may now be recognized and enforced, and that the right of this complainant to proceed with the prosecution of this suit in said State Court may be no longer wrongfully and unlawfully defeated and delayed as has been to this time wrongfully and unlawfully done, as above set forth; and this petition is presented without waiving the right of this complainant to formally join issue on said removal petition as amended herein, as aforesaid, and have such issue tried, in the event that the prayer of this petition be denied by this Court; and your petitioner will ever pray, etc.

GEORGE F. HARDING,  
*Petitioner.*

State of Illinois,        }  
County of Cook.        } ss.

George F. Harding, being first duly sworn, states on his oath that he is the petitioner whose name is subscribed to the foregoing petition; that he has read the said petition and knows the contents thereof and that the same and the matters therein stated are true, as therein stated, of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes them to be true. Further affiant saith not.

Dated this 29th day of June, A. D. 1909.

GEORGE F. HARDING.

Subscribed and sworn to before me, this  
29th day of June, A. D. 1909.

ALICE WILLNER,  
*Notary Public in and for Cook County, Illinois*

(SEAL)

Complainant offered in evidence *in support of said petition* the evidence already appearing in this Certificate of Evidence and the original Mandate of the Court of Appeals referred to in said petition, which Mandate is as follows:

The proof offered  
in support of  
said petition.

MANDATE FROM COURT OF APPEALS DATED JUNE 28, 1909.

Mandate as per  
of such pro

United States }  
of America, } ss.

The President of the United States of America, To the Honorable the Judges of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, Greeting:

(Seal)

Whereas, lately in the Circuit Court of the United States for the Northern District of Illinois, before you, or some of you, in a cause between George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen, and Corn Products Refining Company, the decree entered under date of the thirteenth day of December, 1907, is in the words and figures following to-wit:

United States of America, }  
Northern District of Illinois, } ss.  
Eastern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES

In and for the Northern District of Illinois.

Eastern Division thereof, In Equity.

Chicago Real Estate Loan & Trust }  
Company, }  
vs. } No. 28,695.  
Corn Products Company *et al.* }

This day comes on to be heard the motion of the defendant, Corn Products Refining Company, entered of record herein November 4, 1907, for an injunction restraining the prosecution of the suit of George F. Harding vs. Standard Oil Company, of New Jersey, Corn Products Refining Company *et al.*, filed in the Superior Court of Cook County, Illinois, on or about

October 19, 1907, and bearing General Number therein 263, 565, and for an order to compel the dismissal of the said last described suit; and there also now coming on to be heard the rule entered herein on November 12, 1907, against George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, to show cause why they and each of them should not be attached for contempt of this court for violating the restraining order entered herein on June 8, 1907; and the court having heard and considered the answers to said rule, filed herein on November 13, 1907, by said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and having considered the petition of said Corn Products Refining Company, filed herein on November 4, 1907, and the exhibits thereto, and all the records and files herein, and all the oral evidence given by and statements of said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, in open court; and the said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner being now present in open court, in person, and being also represented by said George F. Harding and William J. Ammen, as their solicitors; and the court having heard the arguments of Levy Mayer, Esq., solicitor for said petitioner, and of said solicitors for said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and being now fully advised in the premises;

The Court finds that by the institution of said suit of George F. Harding vs. Standrad Oil Company, of New Jersey, et al., the said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner have, and each of them has knowingly and wilfully violated the order of this court, entered herein on June 8, 1907, but the court of its own motion hereby discharges the said rule of November 12, 1907, for contempt, without the infliction of any punishment on any of the said respondents to said rule; and

The Court further finds that the further prosecution of said suit of George F. Harding vs. Standard Oil Company, of New Jersey et al., and the institution by said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, of any action like or similar to the present cause should be enjoined.

Wherefore, the premises considered, it is hereby Ordered, Adjudged and Decreed that said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and each of them, and their and each of their agents, attorneys, solie-



itors and representatives be, and they hereby are, jointly and severally, restrained and enjoined until the further order of this court, from further prosecuting or taking any steps or proceedings of any kind in said case of George F. Harding vs. Standard Oil Company, of New Jersey, Corn Products Refining Company et al., which was instituted in the Superior Court of Cook County, Illinois, on October 19, 1907, and was numbered therein 263,565, and which case was subsequently docketed in and is now pending in this court as case numbered 28,865.

It is hereby further Ordered, Adjudged and Decreed<sup>2</sup> that said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and each of them, and their and each of their agents, attorneys, solicitors and representatives be, and they hereby are, jointly and severally, restrained and enjoined, until the further order of this court, from in any manner whatsoever, either directly or indirectly, instituting or prosecuting, or causing or inspiring to be instituted or prosecuted, in any court, forum, place or jurisdiction whatsoever, any other suit, action or proceeding making charges and seeking relief like or similar to the charges contained and the relief sought in the case herein of Chicago Real Estate Loan & Trust Company against said Corn Products Company et al., but said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, jointly or severally, by an appropriate proceeding or petition and upon a proper showing, may apply to this court for leave to intervene herein or become parties hereto, and

It is further hereby Ordered that that part of said motion of said defendant, Corn Products Refining Company, seeking an order compelling the dismissal of said suit of George F. Harding vs. Standard Oil Company, of New Jersey, et al., be and the same hereby is continued and reserved for the futuer consideration of this court.

And to this order and decree and every part thereof, the said George F. Harding and A. B. Joyner, George F. Harding, Jr., and William J. Ammen, jointly and severally, object and except, denying and objecting to the jurisdiction of the court, and they, and each of them, are hereby granted thirty days from this date within which to present to this court a certificate of evidence to be signed and filed and made a part of the record herein as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the



United States Circuit Court of Appeals for the Seventh Circuit by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

And Whereas, in the term of October, in the year of our Lord one thousand nine hundred and eight, the said cause came on to be heard before the said United States Circuit Court of Appeals for the Seventh Circuit, on the said transcript of record, and was argued by counsel:

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court that the order or decree appealed from be, and the same is hereby reversed with costs; and that this cause be, and the same is hereby remanded to the said Circuit Court with direction to dismiss the bill of the Real Estate Company in conformity with one or the other motions filed therefor and that the petition for an injunction be thereupon dismissed.

Tuesday, January 19, 1909.

And afterwards, to-wit: On the sixteenth day of February, 1909, there was filed in the office of the clerk of this Court, a Petition for Rehearing, which Petition for Rehearing was, on the nineteenth day of February, 1909, overruled, and the Mandate stayed until further order of this Court; and afterward on the nineteenth day of May, 1909, said order staying Mandate was vacated and set aside.

You, therefore, are hereby commanded that such further proceedings be had in said cause, as according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twenty-eighth day of June, in the year of our Lord one thousand nine hundred and nine.

EDWARD M. HOLLOWAY,  
Clerk of the United States Circuit Court  
Appeals for the Seventh Circuit.  
Office of the Clerk

UNITED STATES CIRCUIT COURT OF APPEALS  
at Chicago

Corn Products Refining Co.  
To Edward M. Holloway, Clerk, Dr.

BILL OF COSTS.

George F. Harding, et al. }  
vs. }  
Corn Products Refining Co. }

In Cause No. 1497.  
October Term, 1909.

	Cost of Each Item	
Docketing a case and filing the record.....	\$5.00	5.00
Entering an appearance.....	25	75
Transferring a case to the printed calendar	1 00	1 00
Entering a continuance.....	25	
Filing a motion, order, or other paper.....	25	12 75
Entering any rule, or making or copying any record or any other paper, for each one hundred words .....	20	
Argument .....	20	40
Order .....	20	3 80
Entering a judgment or decree.....	1 00	1 00
Every search of the record of the court and certifying the same .....	1 00	
Affixing a certificate and a seal to any paper	1 00	
Receiving, keeping and paying money, in pursuance of any statute or order of court, one per cent on the amount so received, kept and paid .....		
Preparing the record for the printer, index- ing the same, supervising the printing and distributing the copies, for each printed page of the record and index.....	25	106 25
Making a manuscript copy of the record, when required by the rules, for each one hundred words (but nothing in addition for supervising the printing).....	20	

Issuing a writ of error and accompanying papers, or a mandate or other process....	5 00	5 00
Filing briefs for each party appearing.....	5 00	25 00
Attorney's docket fee .....	20 00	20 00
Cost of printing record .....	.....	385 30
Cost of patent sheets for record.....	.....	.....
		<hr/> 566 20

Paid.....

Balance due....

Received payment .....19....

*Clerk United States Circuit Court of Appeals  
for the Seventh Circuit.*

(Endorsed) Filed June 29, 1909, H. S. Stoddard, Clerk.

Recital that order  
of July 9, 1909,  
referred to said  
petition pre-  
sented June 30,  
1909.

The concluding sentence of the order of July 9, 1909, fixing term probatory has reference to the foregoing petition.

A. L. SANBORN.

Nov. 19, 1909.

Recital that the  
foregoing was  
all the evidence,  
etc.

The foregoing was all the evidence admitted, heard or considered by the Court on the hearing of said motion to amend the removal petition. Other matters offered but not considered or filed are also included in the foregoing certificate of evidence, as appears therein. This certificate is made for the purpose of making such matters a part of the record herein.

The Court further certifies that the portions of this certificate which were not considered by the Court are inserted herein at the request of the complainant.

A. L. SANBORN.

Dated Nov. 19, 1909.

**EXHIBIT A.**

**Part II.**